Supreme Court, U.S.
FILED

03 267 JUL 14 2003

No._____

In the

Supreme Court of the United States

STEPHEN M. HICKEL,

Petitioner

v.

KENT COUNTY CONCEALED WEAPONS LICENSING BOARD,

Respondent

On Petition For Writ Of Certiorari To The Court of Appeals of Michigan

APPENDIX FOR WRIT OF CERTIORARI

Stephen M. Hickel,
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(616-891-8336),
in pro per

117PP

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APPENIX A

STATE OF MICHIGAN

COURT OF APPEALS

STEPHEN MARTIN HICKEL
UNPUBLISHED

January 31, 2003

Plaintiff-Appellant,

v

No. 231199

Kent Circuit Court
KENT COUNTY CONCEALED WEAPON
LC No. 00-005186-AS
LICENSING BOARD

Defendant-Appellee

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Plaintiff appeals as of right, in propria persona, from the circuit court's summary dismissal of his complaint for superintending control that plaintiff filed following defendant's denial of his request for an unrestricted license to carry a concealed weapon (CCW) and grant of a restricted license. We affirm.

On appeal, plaintiff claims that he was entitled to an unrestricted CCW license because he has a "full-time right to keep and bear arms for defense of himself and of the state," thus, the circuit court erred when it dismissed his claims. We disagree. Although plaintiff listed several issues in the "Statement of Questions Involved" section of his appellate brief, plaintiff only present argument with regard to the first issue: accordingly, that is the only issue properly presented for this Court's review. See *Wilson v Taylor*, 457 Mich 232,243;577 NW2d 100 (1998); *Ewing v Detroit*, 252 Mich App 149,169;651 NW2d 780 (2002); *Caldwell v Chapman*, 240 Mich App 124, 132-133;610 NW2d 264 (2000).

This Court reviews a decision to grant or deny an order of superintending control for an abuse of discretion. *In re Goehring*, 184 Mich App 360, 366; 457 NW2d 375 (1990). The trial court dismissed plaintiff's action pursuant to MCR 2.116(I)(2), following review of plaintiff's five motions for summary disposition premised on MCR 2.116(C)(10). Under MCR 2.116(T)(2), following review of plaintiff's five motions for summary disposition premised on MCR 2.116(C)(10). Under MCR 2.116(I)(2), "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." See *Burns Clinic Medical Center, PC v Vorenkamp*, 165 Mich App 224, 228-229; 418 NW2d 393 (1987).

Plaintiff claims that he has a "full-time right to keep and bear arms for defense of himself and of the state." This right allegedly derives from Const 1963, art1, § 6, which provides that "[e]very person has a right to keep and bear arms for the defense of himself and the state."[1] However, plaintiff has failed to establish that the constitutional right to "keep and bear arms" is synonymous with an absolute right to carry a concealed

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[1] The Second Amendment of the federal constitution does not apply to the states. People v Swint, 225 Mich App 353, 359-360; 572 NW2d 666 (1997).

pistol. In fact, the plain language of the constitutional provision, read according to its natural, common, and most obvious meaning, does not support that conclusion. *See American Axle & Mfg. Inc v Hamtramck*, 461 Mich 352, 362; 604 NW 2d 330 (2000); *People v Antkoviak*, 242 Mich App 424, 436; 619 NW2d 18 (2000). Further, the jurisprudence of this State has consistently held that the constitutional right to keep and bear arms is not absolute. See *People v Brown*, 253 Mich 537, 538, 541; 235 NW 245 1931); *People v Swint*, 225 Mich App 353, 357; 572 NW2d 666 (1997); *Bay Co Concealed Weapons Licensing Board v Gasta*, 96 Mich App 784, 799; 293 NW2d 707 (1980); *People v McFadden*, 31 Mich App 512, 516; 188 NW2d 141 (1971). Accordingly, any alleged right to carry a concealed pistol a right that plaintiff contends is derivative of the constitutional right to keep and bear arms, would not be absolute.

Plaintiff also argues that MCL 28.4262 infringed on the exercise of his fundamental right to carry a concealed pistol. However, plaintiff has provided no legal authority in support of his assertion that he has such a fundamental right. Clearly as repeatedly acknowledged in legal precedent, this State has a legitimate interest in limiting access to weapons particularly suited for criminal purposes; thus the right to bear arms is subject to the reasonable exercise of police power. See Swint, supra; Gasta, supra; McFadden, supra.

MCL 28.426 was a reasonable exercise of police power in that it included reasonable standards designed to guide each county concealed weapons licensing board in processing applications, thus negating the potential for

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[2] MCL 28.426 was repealed by PA 2000, No 381, effective July 1, 2001. Nevertheless, the mootness doctrine is inapplicable because, pursuant to MCL 28.426h, plaintiff's right to carry a concealed pistol derives from the restricted license that was previously issued under MCL 28.426 which, therefore, continues to impact his existing rights. See East Grand Rapids School Dist v Kent Co Tax Allocation Bd, 415 Mich 381, 390; 330 NW2d 7 (1982).

arbitrary action. See McFadden, supra. In Gasta, supra, this Court held that "the Legislature has insured that an individual's perceived need to carry a concealed weapon will be evaluated in light of the experience and knowledge of the community needs possessed by these local officials [who comprise the licensing board]." Id. . at 790. Our Supreme Court, in Hanselman v Wayne Co Concealed Weapon Licensing Bd. 419 Mich 158; 351 NW2d 544 (1984), relied on the reasoning of Gast, including that the issuance of a license is left to the discretion of county boards which are best able to assess the community and its needs. Id. At 189-190. Accordingly, under the statue as written, a right to carry a concealed pistol was dependent upon the circumstance presented by the applicant and the community. The requirements "that the applicant has good reason to fear injury to his or her person or property, or has other proper reasons," were properly designed to permit the licensing board to evaluate and respond to the circumstances specifically presented by the applicant and the community with maximum effectiveness.

Further, MCL 28.426 was properly applied with regard to plaintiff. The issuance of a license was discretionary and dependent on the licensing board determining that the applicant had a "good reason" to fear injury or "other proper reasons," considering the applicant's and community's needs and problems. See MCL 28.426(1). Here, plaintiff was issued a license that restricted his carrying of a concealed pistol to when he was engaged in hunting, target practice, banking, or business. These restrictions were cognizant of, and consistent with, the reasons plaintiff presented in his application for the license. See MCL 28.426(5). Consequently, as applied to plaintiff, MCL 28.426 constituted a reasonable exercise of police power.

In sum, plaintiff failed to establish that he had a constitutional, absolute, or fundamental right to carry a concealed pistol or that MCL 28.426 constituted an unreasonable exercise of police power either on its face or

as applied to him. Therefore, the trial court properly dismissed plaintiff's complaint for superintending control because there was no genuine issue of material fact that plaintiff was not entitled to an unrestricted license to carry a concealed pistol.
Affirmed.

/s/Donald S. Owens

/s/William B. Murphy

/s/Mark J. Cavanagh

APPENDIX B

Order

Entered: April 23, 2003

Michigan Supreme Court

Lansing Michigan

123302& (64)

STEPHEN MARTIN HICKEL,

Plaintiff-Appellant,

SC:123302

COA: 231199

Kent CC: 00-005186-AS

v

KENT COUNTY CONCEALED WEAPONS

LICENSING BOARD,

Defendant-Appellee.

_____/

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal from the January 31, 2003 decision of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

APPENDIX C

ORDER FOR DISMISSAL UNDER 7-DAY RULE

At a session of said Court, held in the Kent County Circuit Court, County of Kent, Michigan on NOV 17 2000, 2000.

PRESENT: Honorable George S. Buth
Circuit Court Judge

IT APPEARING THAT on Friday, October 20, 2000, the Court heard arguments on five motions for summary judgement/summary disposition filed by the Plaintiff, Steven Martin Hickel; and

IT FURTHER APPEARTING THAT the Court was fully advised of all arguments raised by Steven Martin Hickel in the five motions argued before the Court;

AND IT FURTHER APPEARING THAT the Defendant, the Kent County Concealed Weapons Licensing Board, requested that the Court enter judgment in favor of the Board under MCR 2.116(I)(2);

IT APPEARING THAT the Court, upon hearing all arguments determined that the Defendant was entitled to summary disposition under MCR 2.2116(I)(2);
NOW THEREFORE, IT IS ORDERED THAT the above-captioned is hereby dismissed with prejudice and without costs to all parties pursuant to MCR 2.116(I)(2).

IT IS SO ORDERED.

/s Hon. George S. Buth
ATTEST: A TRUE COPY

APPENIX D

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Every person has a right to keep and bear arms for the defense of himself and the state. (MI Const 1963, Art 1 Sec 6)

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed. (US Second Amendment)

The Fourteenth Amendment to the Constitution of the United States - provides, in pertinent part, that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

42 USC Sec. 1983. - Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia

US Fifth Amendment. No person shall be held to answer for a capital, or otherwise infamous crime, unless

on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

US Supremacy Clause.[3] "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the contrary notwithstanding." U.S. Const. art. VI, Paragraph 2.

US 9th Amendment - The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.**4**

Pursuant to this Court's Rule 14.1(f), the provisions of Michigan Gun laws law involved in this case, including Michigan Firearms Act 372 of 1927, including:

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[3] Supremacy Clause and Application to the State, 'Lectric Law Library's Lexicon On Supremacy Clause. www.lectlaw.com/def2/s105.htm

[4] Annotations. Findlaw.
http://caselaw.lp.findlaw.com/data/constitution/amendment09/
Rights Retained by the People. Aside from contending that a bill of rights was unnecessary, the Federalists responded to those opposing ratification of the Constitution because of the lack of a declaration of fundamental rights by arguing that inasmuch as it would be impossible to list all rights it would be dangerous to list some because there would be those who would seize on the absence of the omitted rights to assert that government was unrestrained as to those [thus supporting the claim that explicit constitutional rights are fundamental].

MCL 28.421a Concealed pistol licenses; issuance; creation of standardized system. Sec. 1a, Sec. 2, Are set forth at App. E and F., *infra*.

APPENIX E

MCLA 28.426(1) [This is the law under which the Petitioner obtained his license -- Petitioner]

MCLA 28.426(1)[partial to save paper]:

(1) The prosecuting attorney, the sheriff, and the director of the department of state police, or their respective authorized deputies, shall constitute boards exclusively authorized to issue a license to an applicant residing within their respective counties, to carry a pistol concealed on the person and to carry a pistol, whether concealed or otherwise, in a vehicle operated or occupied by the applicant. The county clerk of each county shall be clerk of the licensing board, which board shall be known as the concealed weapon licensing board. A license to carry a pistol concealed on the person or to carry a pistol, whether concealed or otherwise, in a vehicle operated or occupied by the person applying for the license, shall not be granted to a person unless the person is 18 years of age or older, is a citizen of the United States, and has resided in this state 6 months or more. A license shall not be issued unless it appears that the applicant has good reason to fear injury to his or her person or property or has other proper reasons and is a suitable person to be licensed. A license shall not be issued to a person who was convicted of a felony or confined for a felony conviction in this state or elsewhere during the 8-year period immediately preceding the date of the application or was adjudged insane unless the person was restored to sanity and so declared by court order.

APPENDIX F

Michigan Act 372 of 1927

[NB. As amended during Petitioner's suit and was applied to his license]

§28.421 FIREARMS LAWS OF MICHIGAN — STATUTES

FIREARMS

AN ACT to regulate and license the selling, purchasing, possessing, and carrying of certain firearms and gas ejecting devices; to prohibit the buying, selling, or carrying of certain firearms and gas ejecting devices without a license or other authorization; to provide for the forfeiture of firearms under certain circumstances; to provide for penalties and remedies; to provide immunity from civil liability under certain circumstances; to prescribe the powers and duties of certain state and local agencies; to prohibit certain conduct against individuals who apply for or receive a license to carry a concealed pistol;

to make appropriations; to prescribe certain conditions for the appropriations; and to repeal all acts and parts of acts inconsistent with this act.[5]

28.421 Definitions (omitted to save paper).

28.421a. Concealed pistol licenses; issuance; creation of standardized system.

Sec. 1a**. It is the intent of the legislature to create a standardized system for issuing concealed pistol licenses to prevent criminals and other violent individuals from obtaining a license to carry a concealed pistol, to allow law abiding residents to obtain a license to carry a concealed pistol, and to**

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[5] History: 1927, Act 372, Eff. Sept. 5, 1927;—Am. 1929, Act 206, Imd. Eff. May 20, 1929;—Am. 1931, Act 333, Imd. Eff. June 16, 1931;—Am. 1980, Act 345, Eff. Mar. 31, 1981;—Am. 1990, Act 320, Eff. Mar. 28, 1991;—Am. 2000, Act 265, Imd. Eff. June 29, 2000;—Am. 2000, Act 381, Eff. July 1, 2001.

prescribe the rights and responsibilities of individuals who have obtained a license to carry a concealed pistol.[6] [underline and bold are Petitioner's emphasis] It is also the intent of the legislature to grant an applicant the right to know why his or her application for a concealed pistol license is denied and to create a process by which an applicant may appeal that denial.[7]

28.422 License to purchase, carry, or transport pistol; issuance; qualifications; applications; sale of pistol; exemptions; basic pistol safety brochure; forging application; implementation during business hours.

Sec. 2. (1) Except as provided in subsection (2), a person shall not purchase, carry, or transport a pistol in this state without first having obtained a license for the pistol as prescribed in this section.

[Subsections omitted to save space]

28.425a Concealed weapon licensing board; membership; quorum; voting; clerk; authority and duties; panel; investigation of license applicant; temporary license; compilation of firearms laws by legislative service bureau; distribution; statement.

Sec. 5a. (1) Each county shall have a concealed weapon licensing board. The concealed weapon licensing board of each county shall have the following members:

(a) The county prosecuting attorney or his or her designee. However, if the county prosecuting attorney decides that he or she does not want to be a member of the concealed weapon licensing board, he or she shall notify the county board of

commissioners in writing that he or she does not want to be a member of the concealed weapon licensing board for the balance of his or her term in office. The county board

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[6] Underline and bold to show what the legislative intent is to issue a license to control the bearing of a pistol for security of self and free state.

[7] History: Add. 2000, Act 381, Eff. July 1, 2001.

of commissioners shall then appoint a replacement for the prosecuting attorney who is a firearms instructor who has the qualifications prescribed in section 5j(1)(c). The person who replaces the prosecuting attorney shall serve on the concealed weapon licensing board in place of the prosecuting attorney for the remaining term of the county prosecuting attorney unless removed for cause by the county board of commissioners. If a
vacancy occurs on the concealed weapon licensing board of the person appointed pursuant to this section during the term of office of the county prosecuting attorney, the county board of commissioners shall appoint a replacement person who is a firearms instructor who has the qualifications prescribed in section 5j(1)(c).

(b) The county sheriff or his or her designee.

(c) The director of the department of state police or his or her designee.

(2) If a prosecuting attorney chooses not to be a member of the concealed weapon licensing board, all of the following apply:

(a) The prosecuting attorney shall be notified of all applications received by the concealed weapon licensing board.

(b) The prosecuting attorney shall be given an opportunity to object to granting a license to carry a concealed pistol and present evidence bearing directly on an applicant's suitability to carry a concealed pistol safely.

(c) The prosecuting attorney shall disclose to the concealed weapon licensing board any information of which he or she has actual knowledge that bears directly on an applicant's suitability to carry a concealed pistol safely.

(3) The county prosecuting attorney or his or her designee shall serve as chairperson of the board unless the prosecuting attorney does not want to be a member of the concealed weapon licensing board, in which case the concealed weapon licensing board shall elect its chairperson. Two members of the concealed weapon licensing board constitute a quorum of the concealed

weapon licensing board. The business of the concealed weapon licensing board shall be conducted by a majority vote of all of the members of the concealed weapon licensing board.

(4) The county clerk shall serve as the clerk of the concealed weapon licensing board.

(5) Except as otherwise provided in this act, the concealed weapon licensing board has exclusive authority to issue, deny, revoke, or suspend a license to carry a concealed pistol. The concealed weapon licensing board shall perform other duties as provided by law.

(6) The concealed weapon licensing board may convene not more than 3 panels to assist the board in evaluating applicants. The panels shall be composed of representatives as prescribed in subsection (1). The panels do not have the authority to issue, deny, revoke, or suspend a license.

(7) The concealed weapon licensing board may investigate the applicant for a license to carry a concealed pistol. The investigation shall be restricted to determining only whether the applicant is eligible under this act to receive a license to carry a concealed pistol, and the investigation regarding the issuance of a license shall end after that determination is made. The concealed weapon licensing board may require the applicant to appear before the board at a mutually agreed-upon time for a conference. The applicant's failure or refusal to appear without valid reason before the concealed weapon licensing board as provided in this subsection is grounds for the board to deny issuance of a license to carry a concealed pistol to that applicant.

(8) If the concealed weapon licensing board determines there is probable cause to believe the safety of the applicant or the safety of a member of the applicant's family is endangered by the applicant's inability to immediately obtain a license to carry a concealed pistol, the concealed weapon licensing board may, pending issuance of a license, issue a temporary license to the

individual to carry a concealed pistol. A temporary license shall be on a form provided by the department of state police. A temporary license shall be unrestricted and shall be valid for not more than 180 days. A temporary license may be renewed for 1 additional period of not more than 180 days. A temporary license is, for all other purposes of this act, a license to carry a concealed pistol.

(9) The legislative service bureau shall compile the firearms laws of this state, including laws that apply to carrying a concealed pistol, and shall provide copies of the compilation to each concealed weapon licensing board in this state for distribution under this subsection. A concealed weapon licensing board shall distribute a copy of the compilation to each individual who applies for a license to carry a concealed pistol at the time the application is submitted. The concealed weapon licensing board shall require the applicant to sign a written statement acknowledging that he or she has received a copy of the compilation. An individual is not eligible to receive a license to carry a concealed pistol until he or she has signed the statement.[8]

28.425b License application; fee; verification of requirements; determination; circumstances for issuance; fingerprints; issuance or denial; temporary license; suspension or revocation of license; definitions.

Sec. 5b. (1) To obtain a license to carry a concealed pistol, an individual shall apply to the concealed weapon licensing board in the county in which that individual resides. The application shall be filed with the county clerk during the county clerk's normal business hours. The application shall be on a form provided by the director of the department of state police and shall allow the applicant to designate whether the applicant seeks a temporary license. The application shall be signed under oath by the applicant. The oath shall be administered by

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[8] History: Add. 2000, Act 381, Eff. July 1, 2001

the county clerk or his or her representative. The application shall contain all of the following information:
(a) The applicant's legal name and date of birth and the address of his or her primary residence. If the applicant resides in a city, village, or township that has a police department, the name of the police department.
(b) A statement by the applicant that the applicant meets the criteria for a license under this act to carry a concealed pistol.
(c) A statement by the applicant authorizing the concealed weapon licensing board to access any record, including any medical record, pertaining to the applicant's qualifications for a license to carry a concealed pistol under this act. The applicant may request that information received by the concealed weapon licensing board under this subdivision be reviewed in a closed session. If the applicant requests that the session be closed, the concealed weapon licensing board shall close the session only for purposes of this subdivision. The applicant and his or her representative have the right to be present in the closed session. Medical records and personal identifying information received by the concealed weapon licensing board under this subdivision is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes or if the applicant is convicted of a felony involving a pistol.
(d) A statement by the applicant regarding whether he or she has a history of mental illness that would disqualify him or her under subsection (7)(j) to (l) from receiving a license to carry a concealed pistol, and authorizing the concealed weapon licensing board to access the mental health records of the applicant relating to his or her mental health history. The applicant may request that information received by the concealed weapon licensing board under this subdivision be reviewed in a closed session. If the applicant requests that the session be

closed, the concealed weapon licensing board shall close the session only for purposes of this subdivision. The applicant and his or her representative have the right to be present in the closed session. Medical records and personal identifying information received by the concealed weapon licensing board under this subdivision is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes.

(e) A statement by the applicant regarding whether he or she has ever been convicted in this state or elsewhere for any felony or misdemeanor.

(f) A statement by the applicant whether he or she has been dishonorably discharged from the United States armed forces

(g) If the applicant seeks a temporary license, the facts supporting the issuance of that temporary license.

(h) The names, residential addresses, and telephone numbers of 2 individuals who are references for the applicant.

(i) A passport-quality photograph of the applicant provided by the applicant at the time of application.

(j) A certificate stating that the applicant has completed the training course prescribed by this act.

(2) The application form shall contain a conspicuous warning that the application is executed under oath and that intentionally making a material false statement on the application is a felony punishable by imprisonment for not more than 4 years or a fine of not more than $2,500.00, or both.

(3) An individual who intentionally makes a material false statement on an application under subsection (1) is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $2,500.00, or both.

(4) The concealed weapon licensing board shall retain a copy of each application for a license to carry a concealed pistol as an official record. One year after the expiration of

a concealed pistol license, the county clerk may destroy the record and maintain only a name index of the record.

(5) Each applicant shall pay a fee of $105.00 by any method of payment accepted by that county for payments of other fees and penalties. A unit of local government, an agency of a unit of local government, or an agency or department of this state shall not charge an additional fee, assessment, or other amount in connection with a license under this section. The fee shall be payable to the county. The county treasurer shall deposit $41.00 of each fee collected under this section in the general fund of the county and credit $26.00 of that deposit to the credit of the county clerk and $15.00 of that deposit to the credit of the county sheriff and forward the balance to the state treasurer. The state treasurer shall deposit the balance of the fee in the general fund to the credit of the department of state police. The department of state police shall use the money received under this act to process the fingerprints and to reimburse the federal bureau of investigation for the costs associated with processing fingerprints submitted under this act. The balance of the money received under this act shall be credited to the department of state police.

(6) The county sheriff on behalf of the concealed weapon licensing board shall verify the requirements of subsection (7)(d), (e), (f), (h), (i), (j), (k), (l), and (m) through the law enforcement information network and report his or her finding to the concealed weapon licensing board. If the applicant resides in a city, village, or township that has a police department, the
concealed weapon licensing board shall contact that city, village, or township police department to determine only whether that city, village, or township police department has any information relevant to the investigation of whether the applicant is eligible under this act to receive a license to carry a concealed pistol.

(7) The concealed weapon licensing board shall issue a license to an applicant to carry a concealed pistol within

the period required under this act after the applicant properly submits an application under subsection (1) and the concealed weapon licensing board determines that all of the following circumstances exist:

(a) The applicant is 21 years of age or older.

(b) The applicant is a citizen of the United States or is a resident legal alien as defined in section 11 of title 18 of the United States Code, is a resident of this state, and has resided in this state for at least 6 months. The concealed weapon licensing board may waive the 6-month residency requirement for a temporary license under section 5a(8) if the concealed weapon licensing board determines there is probable cause to believe the safety of the applicant or the safety of a member of the applicant's family is endangered by the applicant's inability to immediately obtain a license to carry a concealed pistol.

(c) The applicant has knowledge and has had training in the safe use and handling of a pistol by the successful completion of a pistol safety training course or class that meets the requirements of section 5j, and that is available to the general public and presented by a law enforcement agency, junior or community college, college, or public or private institution or organization or firearms training school.

(d) The applicant is not the subject of an order or disposition under any of the following:

(i) Section 464a of the mental health code, 1974 PA 258, MCL 330.1464a.

(ii) Former section 444a of the revised probate code, 1978 PA 642, MCL 700.444a, or section 5107 if the estates and protected individuals code, 1998 PA 386, MCL 700.5107.

(iii) Sections 2950 and 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a.

(iv) Section 6b of chapter V of the code of criminal procedure, 1927 PA 175, MCL 765.6b, if the order has a condition imposed pursuant to section 6b(3) of chapter V of the code of criminal procedure, 1927 PA 175, MCL 765.6b.

(v) Section 16b of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.16b.
(e) The applicant is not prohibited from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm under section 224f of the Michigan penal code, 1931 PA 328, MCL 750.224f.
(f) The applicant has never been convicted of a felony in this state or elsewhere, and a felony charge against the applicant is not pending in this state or elsewhere at the time he or she applies for a license described in this section.
(g) The applicant has not been dishonorably discharged from the United States armed forces.
(h) The applicant has not been convicted of a misdemeanor violation of any of the following in the 8 years immediately preceding the date of application:
(i) Section 617a of the Michigan vehicle code, 1949 PA 300, MCL 257.617a (failing to stop when involved in a personal injury accident).
(ii) Section 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.625, punishable as provided in subsection (8)(b) of that section (drunk driving, second offense).
(iii) Section 625m of the Michigan vehicle code, 1949 PA 300, MCL 257.625m punishable under subsection (4) of that section (drunk driving, commercial vehicle).
(iv) Section 626 of the Michigan vehicle code, 1949 PA 300, MCL 257.626 (reckless driving).
(v) Section 904(1) of the Michigan vehicle code, 1949 PA 300, MCL 257.904 (driving while license suspended or revoked), punishable as a second or subsequent offense.
(vi) Section 185 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.185 (operating aircraft with alcohol with prior conviction).
(vii) Section 29 of the weights and measures act, 1964 PA 283, MCL 290.629 (hindering or obstructing weights and measures enforcement officer).
(viii) Section 10 of the motor fuels quality act, 1984 PA 44, MCL 290.650 (hindering, obstructing, assaulting, or

committing bodily injury upon director or authorized representative).

(ix) Section 80134 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80134, punishable under subsection (5) or (6) of that section (operating ORV under the influence, second or subsequent offense).

(x) Section 82127 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.82127 (operating a snowmobile under the influence with prior conviction), punishable under section 82128(1)(b) or (c) of the natural resources
and environmental protection act, 1994 PA 451, MCL 324.82128.

(xi) Section 80176 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80176, and punishable under section 80177(1)(b) (operating vessel under the influence, second or subsequent offense).

(xii) Section 7403 of the public health code, 1978 PA 368, MCL 333.7403.

(xiii) Section 353 of the railroad code of 1993, 1993 PA 354, MCL 462.353 (operating locomotive under the influence), punishable under subsection (4) of that section.

(xiv) Section 7 of 1978 PA 33, MCL 722.677 (displaying sexually explicit materials to minors).

(xv) Section 81 of the Michigan penal code, 1931 PA 328, MCL 750.81 (assault or domestic assault).

(xvi) Section 81a(1) or (2) of the Michigan penal code, 1931 PA 328, MCL 750.81a (aggravated assault or aggravated domestic assault).

(xvii) Section 115 of the Michigan penal code, 1931 PA 328, MCL 750.115 (entering without breaking).

(xviii) Section 136b(6) of the Michigan penal code, 1931 PA 328, MCL 750.136b (fourth degree child abuse).

(xvix) Section 145a of the Michigan penal code, 1931 PA 328, MCL 750.145a (accosting, enticing, or soliciting a child for immoral purposes).

(xx) Section 145n of the Michigan penal code, 1931 PA 328, MCL 750.145n (vulnerable adult abuse).
(xxi) Section 157b(3)(b) of the Michigan penal code, 1931 PA 328, MCL 750.157b (solicitation to commit a felony).
(xxii) Section 215 of the Michigan penal code, 1931 PA 328, MCL 750.215 (impersonating sheriff, conservation officer, coroner, constable, or police officer).
(xxiiii) Section 223 of the Michigan penal code, 1931 PA 328, MCL 750.223 (illegal sale of a firearm or ammunition).
(xxiv) Section 224d of the Michigan penal code, 1931 PA 328, MCL 750.224d (illegal sale of a self-defense spray).
(xxv) Section 226a of the Michigan penal code, 1931 PA 328, MCL 750.226a (sale or possession of a switchblade).
(xxvi) Section 227c of the Michigan penal code, 1931 PA 328, MCL 750.227c (improper transportation of a firearm).
(xxvii) Section 228 of the Michigan penal code, 1931 PA 328, MCL 750.228 (failure to have a pistol inspected).
(xxviii) Section 229 of the Michigan penal code, 1931 PA 328, MCL 750.229 (accepting a pistol in pawn).
(xxvix) Section 232 of the Michigan penal code, 1931 PA 328, MCL 750.232 (failure to register the purchase of a firearm or a firearm component).
(xxx) Section 232a of the Michigan penal code, 1931 PA 328, MCL 750.232a (improperly obtaining a pistol, making a false statement on an application to purchase a pistol, or using false identification to purchase a pistol).
(xxxi) Section 233 of the Michigan penal code, 1931 PA 328, MCL 750.233 (intentionally aiming a firearm without malice).
(xxxii) Section 234 of the Michigan penal code, 1931 PA 328, MCL 750.234 (intentionally discharging a firearm aimed without malice).
(xxxiii) Section 234d of the Michigan penal code, 1931 PA 328, MCL 750.234d (possessing a firearm on prohibited premises).
(xxxiv) Section 234e of the Michigan penal code, 1931 PA 328, MCL 750.234e (brandishing a firearm in public).

(xxxv) Section 234f of the Michigan penal code, 1931 PA 328, MCL 750.234f (possession of a firearm by an individual less than 18 years of age).
(xxxvi) Section 235 of the Michigan penal code, 1931 PA 328, MCL 750.235 (intentionally discharging a firearm aimed without malice causing injury).
(xxxvii) Section 235a of the Michigan penal code, 1931 PA 328, MCL 750.235a (parent of a minor who possessed a firearm in a weapon free school zone).
(xxxviii) Section 236 of the Michigan penal code, 1931 PA 328, MCL 750.236 (setting a spring gun or other device).
(xxxix) Section 237 of the Michigan penal code, 1931 PA 328, MCL 750.237 (possessing a firearm while under the influence of intoxicating liquor or a drug).
(xl) Section 237a of the Michigan penal code, 1931 PA 328, MCL 750.237a (weapon free school zone violation).
(xli) Section 335a of the Michigan penal code, 1931 PA 328, MCL 750.335a (indecent exposure).
(xlii) Section 411h of the Michigan penal code, 1931 PA 328, MCL 750.411h (stalking).
(xliii) Section 1 of 1952 PA 45, MCL 752.861 (reckless, careless, or negligent use of a firearm resulting in injury or death).
(xliv) Section 2 of 1952 PA 45, MCL 752.862 (careless, reckless, or negligent use of a firearm resulting in property damage).
(xlv) Section 3a of 1952 PA 45, MCL 752.863a (reckless discharge of a firearm).
(xlvi) A violation of a law of the United States, another state, or a local unit of government of this state or another state substantially corresponding to a violation described in subparagraphs (i) to (xlv).
(i) The applicant has not been convicted of a misdemeanor violation of any of the following in the 3 years immediately preceding the date of application unless the misdemeanor violation is listed under subdivision (h):
(i) Section 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.625 (operating under the influence).

(ii) Section 625a of the Michigan vehicle code, 1949 PA 300, MCL 257.625a (refusal of commercial vehicle driver to submit to a chemical test).
(iii) Section 625k of the Michigan vehicle code, 1949 PA 300, MCL 257.625k (negligently fails to comply).
(iv) Section 625l of the Michigan vehicle code, 1949 PA 300, MCL 257.625l (circumventing an ignition interlocking device).
(v) Section 625m of the Michigan vehicle code, 1949 PA 300, MCL 257.625m, punishable under subsection (3) of that section (operating a commercial vehicle with alcohol content).
(vi) Section 185 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.185 (operating aircraft under the influence).
(vii) Section 81134 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81134 (operating ORV under the influence).
(viii) Section 81135 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81135 (operating ORV having consumed controlled substance).
(ix) Section 82127 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.82127 (operating a snowmobile under the influence).
(x) Part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461 (controlled substances).
(xi) Section 353 of the railroad code of 1993, 1993 PA 354, MCL 462.353 (operating locomotive under the influence), punishable under subsection (3) of that section.
(xii) Section 167 of the Michigan penal code, 1931 PA 328, MCL 750.167 (disorderly person).
(xiii) Section 174 of the Michigan penal code, 1931 PA 328, MCL 750.174 (embezzlement).
(xiv) Section 218 of the Michigan penal code, 1931 PA 328, MCL 750.218 (false pretenses).
(xv) Section 356 of the Michigan penal code, 1931 PA 328, MCL 750.356 (larceny).

(xvi) Section 356d of the Michigan penal code, 1931 PA 328, MCL 750.356d (retail fraud).
(xvii) Section 359 of the Michigan penal code, 1931 PA 328, MCL 750.359 (larceny-vacant building).
(xviii) Section 362 of the Michigan penal code, 1931 PA 328, MCL 750.362 (larceny by conversion).
(xix) Section 362a of the Michigan penal code, 1931 PA 328, MCL 750.362a (defrauding lessor).
(xx) Section 377a of the Michigan penal code, 1931 PA 328, MCL 750.377a (malicious destruction of property).
(xxi) Section 380 of the Michigan penal code, 1931 PA 328, MCL 750.380 (malicious destruction of real property).
(xxii) Section 479a of the Michigan penal code, 1931 PA 328, MCL 750.479a (failure to obey police direction).
(xxiiii) Section 535 of the Michigan penal code, 1931 PA 328, MCL 750.535 (receiving stolen property).
(xxiv) Section 540e of the Michigan penal code, 1931 PA 328, MCL 750.540e (malicious use of telephones).
(xxv) A violation of a law of the United States, another state, or a local unit of government of this state or another state substantially corresponding to a violation described in subparagraphs (i) to (xxiv).
(j) The applicant has not been found guilty but mentally ill of any crime and has not offered a plea of not guilty of, or been acquitted of, any crime by reason of insanity.
(k) The applicant has never been subject to an order of involuntary commitment in an inpatient or outpatient setting due to mental illness.
(l) The applicant does not have a diagnosed mental illness at the time the application is made regardless of whether he or she is receiving treatment for that illness.
(m) The applicant is not under a court order of legal incapacity in this state or elsewhere.
(n) Issuing a license to the applicant to carry a concealed pistol in this state is not detrimental to the safety of the applicant or to any other individual. A determination under this subdivision shall be based on clear and convincing evidence of repeated violations of this act,

crimes, personal protection orders or injunctions, or police reports or other clear and convincing evidence of the actions of, or statements of, the applicant that bear directly on the applicant's ability to carry a concealed pistol.

(8) Upon entry of a court order or conviction of 1 of the enumerated prohibitions for using, transporting, selling, purchasing, carrying, shipping, receiving or distributing a firearm in this section the department of state police shall immediately enter the order or conviction into the law enforcement information network. For purposes of this act,

information of the court order or conviction shall not be removed from the law enforcement information network, but may be moved to a separate file intended for the use of the county concealed weapon licensing boards, the courts, and other government entities as necessary and exclusively to determine eligibility to be licensed under this act.

(9) An individual, after submitting an application and paying the fee prescribed under subsection (5), shall request and have classifiable fingerprints taken by the county sheriff or a local police agency. The county sheriff or local police agency shall take the fingerprints within 5 business days after the request.

(10) The fingerprints shall be taken, under subsection (9), on forms and in a manner prescribed by the department of state police. The fingerprints shall be immediately forwarded to the department of state police for comparison with fingerprints

already on file with the department of state police. The department of state police shall forward the fingerprints to the federal bureau of investigation. Within 10 days after receiving a report of the fingerprints from the federal bureau of investigation,

the department of state police shall provide a copy to the submitting sheriff's department or local police agency as appropriate and the clerk of the appropriate concealed

weapon licensing board. Except as provided in subsection (14), the concealed weapon licensing board shall not issue a concealed pistols license until it receives the fingerprint comparison report prescribed in this subsection. The concealed weapon licensing board may deny a license if an individual's fingerprints are not classifiable by the federal bureau of investigation.

(11) The concealed weapon licensing board shall deny a license to an applicant to carry a concealed pistol if the applicant is not qualified under subsection (7) to receive that license.

(12) A license to carry a concealed pistol that is issued based upon an application that contains a material false statement is void from the date the license is issued.

(13) Subject to subsections (10) and (14), the concealed weapon licensing board shall issue or deny issuance of a license within 45 days after the concealed weapon licensing board receives the fingerprint comparison report provided under subsection (10). If the concealed weapon licensing board denies issuance of a license to carry a concealed pistol, the concealed weapon licensing board shall within 5 business days do both of the following:

(a) Inform the applicant in writing of the reasons for the denial. Information under this subdivision shall include all of the following:

(i) A statement of the specific and articulable facts supporting the denial.

(ii) Copies of any writings, photographs, records, or other documentary evidence upon which the denial is based.

(b) Inform the applicant in writing of his or her right to appeal the denial to the circuit court as provided in section 5d.

(14) If the fingerprint comparison report is not received by the concealed weapon licensing board within 60 days after the fingerprint report is forwarded to the department of state police by the federal bureau of investigation, the concealed weapon licensing board shall issue a temporary license to carry a concealed pistol to the applicant if the

applicant is otherwise qualified for a license. A temporary license issued under this section is valid for 180 days or until the concealed weapon licensing board receives the fingerprint comparison report provided under subsection (10) and issues or denies issuance of a license to carry a concealed pistol as otherwise provided under this act. Upon issuance or the denial of issuance of the license to carry a concealed pistol to an applicant who received a temporary license under this section, the applicant shall immediately surrender the temporary license to the concealed weapon licensing board that issued that temporary license.

(15) If an individual licensed under this act to carry a concealed pistol moves to a different county within this state, his or her license remains valid until it expires or is otherwise suspended or revoked under this act. A license to carry a concealed pistol that is lost, stolen, or defaced may be replaced by the issuing county clerk for a replacement fee of $10.00.

(16) If a concealed weapons licensing board suspends or revokes a license issued under this act, the license is forfeited and shall be returned to the concealed weapons licensing board forthwith.

[Section 17 and all parts omitted to save paper]

28.425d Denial or failure to issue license; appeal.

Sec. 5d. (1) If the concealed weapon licensing board denies issuance of a license to carry a concealed pistol, or fails to issue that license as provided in this act, the applicant may appeal the denial or the failure to issue the license to the circuit court in the judicial circuit in which he or she resides. The appeal of the denial or failure to issue a license shall be determined by a review of the record for error, except that if the decision of the concealed weapon licensing board was based upon grounds specified in section 5b(7)(n) that portion of the appeal shall be by hearing de novo. Witnesses in the hearing
shall be sworn. A jury shall not be provided in a hearing under this section.

(2) If the court determines that the denial or failure to issue a license was clearly erroneous, the court shall order the concealed weapon licensing board to issue a license as required by this act.
(3) If the court determines that the decision of the concealed weapon licensing board to deny issuance of a license to an applicant was arbitrary and capricious, the court shall order this state to pay 1/3 and the county in which the concealed weapon licensing board is located to pay 2/3 of the actual costs and actual attorney fees of the applicant in appealing the denial.
(4) If the court determines that an applicant's appeal was frivolous, the court shall order the applicant to pay the actual costs and actual attorney fees of the concealed weapon licensing board in responding to the appeal.[9]
[28.425e omitted to save paper]
28.425f Concealed pistol license; possession; disclosure; violation; penalty; seizure; forfeiture.
Sec. 5f. (1) An individual who is licensed under this act to carry a concealed pistol shall have his or her license to carry that pistol in his or her possession at all times he or she is carrying a concealed pistol.
(2) An individual who is licensed under this act to carry a concealed pistol and who is carrying a concealed pistol shall show both of the following to a peace officer upon request by that peace officer:
(a) His or her license to carry a concealed pistol.
(b) His or her driver license or Michigan personal identification card.
(3) An individual licensed under this act to carry a concealed pistol and who is carrying a concealed pistol and who is stopped by a peace officer shall immediately disclose to the peace officer that he or she is carrying a pistol concealed upon his or her person or in his or her vehicle.

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[9] History: Add. 2000, Act 381, Eff. July 1, 2001;—Am. 2002, Act 719, Eff. July 1, 2003.

(4) An individual who violates subsection (1) or (2) is responsible for a state civil infraction and may be fined not more than $100.00.
(5) An individual who violates subsection (3) is responsible for a state civil infraction and may be fined as follows:
(a) For a first offense, by a fine of not more than $500.00 or by the individual's license to carry a concealed pistol being suspended for 6 months, or both.
(b) For a subsequent offense within 3 years of a prior offense, by a fine of not more than $1,000.00 and by the individual's license to carry a concealed pistol being revoked.
(6) If an individual is found responsible for a state civil infraction under this section, the court shall notify the department of state police and the concealed weapon licensing board that issued the license of that determination.
(7) A pistol carried in violation of this section is subject to immediate seizure by a peace officer. If a peace officer seizes a pistol under this subsection, the individual has 45 days in which to display his or her license or documentation to an authorized employee of the law enforcement entity that employs the peace officer. If the individual displays his or her license or documentation to an authorized employee of the law enforcement entity that employs the peace officer within the 45-day period, the authorized employee of that law enforcement entity shall return the pistol to the individual unless the individual is prohibited by law from possessing a firearm. If the individual does not display his or her license or documentation within the 45-day period, the pistol is subject to forfeiture as provided in section 5g. A pistol is not subject to immediate seizure under this subsection if both of the following circumstances exist:
(a) The individual has his or her driver license or Michigan personal identification card in his or her possession when the violation occurs.

(b) The peace officer verifies through the law enforcement information network that the individual is licensed under this act to carry a concealed pistol.[10]

28.425g Pistol subject to seizure and forfeiture.

Sec. 5g. A pistol carried in violation of this act is subject to seizure and forfeiture in the same manner that property is subject to seizure and forfeiture under sections 4701 to 4709 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709. This section does not apply if the violation is a state civil infraction under section 5f unless the individual fails to present his or her license within the 45-day period described in that section.

28.425o Premises on which carrying concealed weapon prohibited; "premises" defined; exceptions to subsection (1); violation.

Sec. 5o. (1) Subject to subsection (4), an individual licensed under this act to carry a concealed pistol, or who is exempt from licensure under section 12a(f), shall not carry a concealed pistol on the premises of any of the following:

(a) A school or school property except that a parent or legal guardian of a student of the school is not precluded from carrying a concealed pistol while in a vehicle on school property, if he or she is dropping the student off at the school or picking up the child from the school. As used in this section, "school" and "school property" mean those terms as defined in section 237a of the Michigan penal code, 1931 PA 328, MCL 750.237a.

(b) A public or private child care center or day care center, public or private child caring institution, or public or private child placing agency.

(c) A sports arena or stadium.

(d) A bar or tavern licensed under the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303, where the primary source of income of the

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[10] History: Add. 2000, Act 381, Eff. July 1, 2001;—Am. 2002, Act 719, Eff. July 1, 2003.

business is the sale of alcoholic liquor by the glass and consumed on the premises. This subdivision shall not apply to an owner or employee of the business. The Michigan liquor control commission shall develop and make available to holders of licenses under the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303, an appropriate sign stating that "This establishment prohibits patrons from carrying concealed weapons". The owner or operator of an establishment licensed under the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303, may, but shall not be required to, post the sign developed under this subdivision. A record made available by an establishment licensed under the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303, necessary to enforce this subdivision is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(e) Any property or facility owned or operated by a church, synagogue, mosque, temple, or other place of worship, unless the presiding official or officials of the church, synagogue, mosque, temple, or other place of worship permit the carrying of concealed pistol on that property or facility.

(f) An entertainment facility with a seating capacity of 2,500 or more individuals that the individual knows or should know has a seating capacity of 2,500 or more individuals or that has a sign above each public entrance stating in letters not less than 1-inch high a seating capacity of 2,500 or more individuals.

(g) A hospital.

(h) A dormitory or classroom of a community college, college, or university.

(2) An individual licensed under this act to carry a concealed pistol, or who is exempt from licensure under section 12a(f), shall not carry a concealed pistol in violation of R 432.1212 or a successor rule of the Michigan administrative code promulgated pursuant to the

Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 32.201 to 432.226.

(3) As used in subsection (1), "premises" does not include parking areas of the places identified under subsection (1).

(4) Subsection (1) does not apply to any of the following:

(a) An individual licensed under this act who is a retired police officer or retired law enforcement officer. The concealed weapon licensing board may require a letter from the law enforcement agency stating that the retired police officer or law enforcement officer retired in good standing.

(b) An individual who is licensed under this act and who is employed or contracted by an entity described under subsection (1) to provide security services and is required by his or her employer or the terms of a contract to carry a concealed firearm on the premises of the employing or contracting entity.

(c) An individual who is licensed as a private investigator or private detective under the private detective license act, 1965 PA 285, MCL 338.821 to 338.851.

(d) Any of the following who is licensed under this act while on duty and in the course of his or her employment:

(i) A corrections officer of a county sheriff's department.

(ii) A motor carrier officer or capitol security officer of the department of state police.

(iii) A member of a sheriff's posse.

(iv) An auxiliary officer or reserve officer of a police or sheriff's department.

(v) A parole or probation officer of the department of corrections.

(5) An individual who violates this section is responsible for a state civil infraction or guilty of a crime as follows:

(a) Except as provided in subdivisions (b) and (c), the individual is responsible for a state civil infraction and may be fined not more than $500.00. The court shall order the individual's license to carry a concealed pistol suspended for 6 months.

(b) For a second violation, the individual is guilty of a misdemeanor punishable by a fine of not more than $1,000.00. The court shall order the individual's license to carry a concealed pistol revoked.
(c) For a third or subsequent violation, the individual is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $5,000.00, or both. The court shall order the individual's license to carry a concealed pistol revoked.11
[some sections omitted]
28.429 Pistols; safety inspection required; certificate of inspection; exemptions; requirements of pistol presented for inspection; violation as civil infraction; fine.
Sec. 9. (1) A person within the state who owns or comes into possession of a pistol shall, if he or she resides in a city, township, or village having an organized police department, present the pistol for safety inspection to the commissioner or chief of police of the city, township, or village police department or to a duly authorized deputy of the commissioner or chief of police. If that person resides in a part of the county not included within a city, township, or village having an organized police department, he or she shall present the pistol for safety inspection to the sheriff of the county or to a duly authorized
deputy of the sheriff. If the person presenting the pistol is eligible to possess a pistol under section 2(1), a certificate of inspection shall be issued in triplicate on a form provided by the director of the department of state police, containing the name, age, address, description, and signature of the person presenting the pistol for inspection, together with a full description of the pistol. The original of the certificate shall be delivered to the registrant. The duplicate of the certificate shall be mailed within 48 hours to the director of the department of state

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[11] History: Add. 2000, Act 381, Eff. July 1, 2001;—Am. 2002, Act 719, Eff. July 1, 2003.

police and filed and indexed by the department and kept as a permanent official record. The triplicate of the certificate shall be retained and filed in the office of the sheriff, commissioner, or chief of police. This section does not apply to a wholesale or retail dealer in firearms who regularly engages in the business of selling pistols at retail, or to a person who holds a collection of pistols kept solely for the purpose of display as relics, curios, or antiques, and that are not made for modern ammunition or are permanently deactivated.

(2) A person who presents a pistol for a safety inspection under subsection (1) shall ensure that the pistol is unloaded and that the pistol is equipped with a trigger lock or other disabling mechanism or encased when the pistol is presented for inspection. A person who violates this subsection is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $50.00.[12]

[remaining sections omitted]

Hunting and Fishing Licenses

324.43510 Carrying or transporting firearm, slingshot, bow and arrow, crossbow or trap; license required.

Sec. 43510. A person shall not carry or transport a firearm, slingshot, bow and arrow, crossbow, or a trap while in any area frequented by wild animals unless that person has in his or her possession a license as required under this part.

[13]324.43511 Deer or elk season; transporting or possessing shotgun or rifle; license required.

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[12] History: 1927, Act 372, Eff. Sept. 5, 1927;—CL 1929, 16758;—Am. 1931, Act 333, Imd. Eff. June 16, 1931;—CL 1948, 28.429;—Am. 1957, Act 259, Eff. Sept. 27, 1957;—Am. 1964, Act 216, Eff. Aug. 28, 1964;—Am. 1986, Act 262, Imd. Eff. Dec. 9, 1986;—Am. 1990, Act 320, Eff. Mar. 28, 1991;—Am. 1996, Act 169, Imd. Eff. Apr. 18, 1996.

[13] History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff.Mar.1,1997.

Sec. 43511. During the open season for the taking of deer or elk with a firearm, other than the muzzle-loading deer season, a person shall not transport or possess a shotgun with buckshot, slug load, ball load, or cut shell or a rifle other than a .22 caliber rim fire, unless the person has in his or her possession a license to hunt deer or elk with a firearm.[14]

324.43513 Carrying, transporting, or possessing firearm, bow and arrow, or crossbow; hunting license not required; carrying or possessing unloaded weapon.

Sec. 43513. (1) A person may carry, transport, or possess a firearm, a bow and arrow, or a crossbow without a hunting license while at or going to and from a recognized rifle or target range, trap, or skeet shooting ground, or archery range if the firearm or bow and arrow or crossbow, while being carried or transported, is as follows:

(a) The firearm is unloaded in both barrel and magazine and either enclosed in a case or carried in the trunk of a vehicle.

(b) The bow or crossbow is unstrung, enclosed in a case, or carried in the trunk of a vehicle.

(2) Regardless of whether the person has a license or it is open season for the taking of game, a person may carry, transport, possess or discharge a firearm, a bow and arrow, or a crossbow if all of the following apply:

(a) The person is not taking or attempting to take game but is engaged in 1 or more of the following activities:

(i) Target practice using an identifiable, artificially constructed target or targets.

(ii) Practice with silhouettes, plinking, skeet, or trap.

(iii) Sighting-in the firearm, bow and arrow, or crossbow.

(b) The person is, or is accompanied by or has the permission of, either of the following:

(i) The owner of the property on which the activity under subdivision (a)(i), (ii), or (iii) is taking place.

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[14] History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

(ii) The lessee of that property for a term of not less than 1 year.

(c) The owner or lessee of the property does not receive remuneration for the activity under subdivision (a)(i), (ii), or (iii).

(3) A person may carry or possess an unloaded weapon at any time if the person is traveling to or from or participating in an historical reenactment.[15]

[remaining sections omitted to save paper]

Additional Michigan Statutes Pertaining to Bearing of an Arm

750.224f. Possession of firearm by person convicted of felony; circumstances; penalty; applicability of section to expunged or set aside conviction; "felony" and "specified felony" defined.

Sec. 224f. (1) Except as provided in subsection (2), a person convicted of a felony shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state until the expiration of 3 years after all of the following circumstances exist:

(a) The person has paid all fines imposed for the violation.

(b) The person has served all terms of imprisonment imposed for the violation.

(c) The person has successfully completed all conditions of probation or parole imposed for the violation.

(2) A person convicted of a specified felony shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state until all of the following circumstances exist:

(a) The expiration of 5 years after all of the following circumstances exist:

(i) The person has paid all fines imposed for the violation.

(ii) The person has served all terms of imprisonment imposed for the violation.

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[15] History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 1998, Act 129, Eff. Mar. 23, 1999.

(iii) The person has successfully completed all conditions of probation or parole imposed for the violation.
(b) The person's right to possess. use, transport, sell, purchase, carry, ship, receive, or distribute a firearm has been restored pursuant to section 4 of Act No. 372 of the Public Acts of 1927, being section 28.424 of the Michigan Compiled Laws.
(3) A person who possesses, uses, transports, sells, purchases, carries, ships, receives, or distributes a firearm in violation of this section is guilty of a felony, punishable by imprisonment for not more than 5 years, or a fine of not more than $5,000.00, or both.
(4) This section does not apply to a conviction that has been expunged or set aside, or for which the person has been pardoned, unless the expunction, order, or pardon expressly provides that the person shall not possess a firearm.
(5) As used in this section, "felony" means a violation of a law of this state, or of another state, or of the United States that is punishable by imprisonment for 4 years or more, or an attempt to violate such a law.
(6) As used in subsection (2), "specified felony" means a felony in which 1 or more of the following circumstances exist:
(i) An element of that felony is the use, attempted use, or threatened use of physical force against the person or property of another, or that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.
(ii) An element of that felony is the unlawful manufacture, possession, importation, exportation, distribution, or dispensing of a controlled substance.
[sections omitted]

Additional Michigan Laws Regarding the Bearing of Arms

750.227 Concealed weapons; carrying; penalty.

Sec. 227. (1) A person shall not carry a dagger, dirk, stiletto, a double-edged non folding stabbing instrument of any length, or any other dangerous weapon, except a hunting knife adapted and carried as such, concealed on or about his or her person, or whether concealed or otherwise in any vehicle operated or occupied by the person, except in his or her dwelling house, place of business or on other land possessed by the person.

(2) A person shall not carry a pistol concealed on or about his or her person, or, whether concealed or otherwise, in a vehicle operated or occupied by the person, except in his or her dwelling house, place of business, or on other land possessed by the person, without a license to carry the pistol as provided by law and if licensed, shall not carry the pistol in a place or manner inconsistent with any restrictions upon such license.

(3) A person who violates this section is guilty of a felony, punishable by imprisonment for not more than 5 years, or by a fine of not more than $2,500.00.[16]

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[16] History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.227;—Am. 1973, Act 206, Eff. Mar. 29, 1974;—Am. 1986, Act 8, Eff. July 1, 1986. Constitutionality: The double jeopardy protection against multiple punishment for the same offense is a restriction on a court's ability to impose punishment in excess of that intended by the Legislature, not a limit on the Legislature's power to define crime and fix punishment. People v. Sturgis, 427 Mich. 392, 397 N.W.2d 783 (1986). Former law: See section 5 of Act 372 of 1927, being CL 1929, § 16753.

APPENDIX G

Addendum to Docketing Statement (Partial)

Michigan Court of Appeals

18 DECEMBER 2000

9. Brief Statement of all issues to be raised on appeal.

The Appellant wishes to preserve all Federal questions for an Appellate review of a Federal Court including the Second Amendment, the 9th Amendment, Civil Rights violations, and any Federal due process and Equal Protection issues plus the privilege and immunity issue brought about by the Appellant's possession of another state's General Concealed weapons license, which was shown to the Judge in hearing.

APPENDIX H

Letter from Respondent

Concealed Weapons Licensing Board
County Clerk

August 16, 1999

Stephen Hickel
8220 Piney Woods Drive SE
Caledonia, MI 49316

Dear Mr. Hickel:

Your Application for a Concealed Pistols Permit has been received by the Kent County Concealed Weapons Licensing Board.

You have requested a permit for personal protection. The policy of the Board is to deny permits for anything other than hunting and target, except in cases of extreme necessity. Therefore, you need to appear before the Board to explain your request, and then an appropriate decision can be made in regards to your permit.

The next board meeting will be held on Thursday, September 2, 1999. To Schedule an appointment to appear before the Board, please contact me at (616) 336-3554.

Sincerely,
s/Kelly Lemiesz
Office Administrator

APPENDIX I

Letter from Petitioner

Concealed Weapons Licening Board
County Clerk

September 10, 1999

Stephen Hickel
8220 Piney Woods Drive SE
Caledonia, MI 49316

Dear Mr. Hickel:

Your application to carry a Concealed Weapon has been received by the Kent County Concealed Weapons Licensing Board.

You had requested a permit for personal protection. After careful consideration, the board unanimously voted to deny your request.

If you have any questions in regards to this letter, please contact me at (616) 336-3554.

Sincerely,
s/Kelly Lemiesz
Kelly Lemiesz
Office Administrator

APPENDIX J

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

IN RE STEPHEN MARTIN HICKEL, Plaintiff, vs. KENT COUNTY CONCEALED WEAPON LICENSING BOARD, AND ITS DELEGATES, Defendant	Case No.: No. 00-05186 - AS AGENDA FOR 15 SEPTEMBER 2000 HEARING DATE

PLAINTIFF'S AGENDA FOR THE 15 SEPTEMBER 2000 HEARING PER REQUEST BY THE COURT AT THE HEARING DATED 01 SEPTEMBER 2000

Estimated Time: 1 hour

1. Opening Remarks by Plaintiff
    a. Plaintiff's Request for an upgrade to Unrestricted License for Three Years
    b. Plaintiff's desire for Defendant to Follow Open Meeting Act procedures
    c. Plaintiff's desire for Defendant to tape record or videotape or transcribe all meetings.
    d. Plaintiff's desire for Defendant to follow open and fair licensing practices.
    e. Plaintiff's view of Purpose of the CCW Laws
    f. Plaintiff's view of Purpose of the Board
        i. Discretion limited to determination of threat

ii. Determine if applicant is otherwise qualified
iii. Determine if reason is self-defense
g. Strict Scrutiny
h. Judicial Construction

2. Known Admissions and Evidence
   a. Duffin Brief
   b. Admission by Defendant of Granting Unrestricted to only Law Enforcement
   c. Affadavit of Plaintiff
   d. Enclosures (or sections as Plaintiff called them) to original complaint.
   e. Their response to Plaintiff's Motions for Summary Dispositions
      i. Admitted they partially prohibit the RKBA
      ii. Need to Interpret "good reason...other proper reason"
      iii. Admit they restrict unrestricted licenses to just law-enforcement
         1. Same as saying they are biased
         2. Double standard
   f. Other

3. Issues:
   a. Proper Assessment of all MI Laws and their Interaction
   b. "Good Reason...other Proper Reason"
   c. Bias v Discretion
      i. Board of Law Enforcement favoring law enforcement
      ii. Local Rule stacked against non-law-enforcement applicant (only granted three in last four years)
      iii. Conflict of Interest
   d. Discretion:
      i. To determine need?
      ii. To determine threat?

e. Civil Rights Violation 42USC, 21, 1983, 1985
f. Privileges & Immunities
g. Michigan Constitution Article 1.6
h. 2nd Amendment
    i. Applies to State (why?)
    ii. Individual Right (US v Emerson)
i. 9th Amendment
j. Right of Reasonable Police Power v Right to Keep and Bear Arms
k. People v Brown and People v McFadden
l. People v Williams
m. Hanselman v Killeen
n. People v Swint
o. Restriction v Prohibition
    i. Act of licensing itself as the restriction
    ii. Act of Restricting Licenses as a Prohibition
p. Zerillo "Will of the Sheriff" v Will of the Legislature
q. Schubert v Debard
    i. Looking beneath reason of self-defense contravenes the essential nature of a Constitutional protection.
r. Need v Reason
s. Right to be Left Alone (Roe v Wade)
t. Open v Concealed Carry
u. Reasonable Police Power
v. Due Process
    i. Composition of Board
    ii. Ultra Vires Local Rules v Proper Local Rules
        1. Ignoring Substantial Matters of law and Constitution
        2. Ignoring Binding Court Precedence

3. Ignoring Social and Scientific Impact of Defendant's Policies
    a. Lott and Mustard Study
4. Violating Civil Rights laws
5. Violating the Constitutions of the State and the US.
    a. 2nd Amendment
6. Multiple Due Process and Equal Protection issues.
7. Procedural Due Process Issues.

iii. Full-faith and Credit of FL License

iv. Illegal Judicial Construction
1. Need to Interpret "Good Reason...other Proper Reason"
2. Ambiguity of "Good Reason...other proper reason"
3. Ambiguity of "local needs" in Court decisions
    a. Rule of Lenity

v. Good v Extreme Reason

vi. Investigatory and Adjudicatory Tribunal and Bias

vii. Plaintiff's lack of clarity as to what Constituted Criteria to obtain License
1. Policy manual not provided or disseminated
2. Affadavit

viii. Discriminatory Intent and Disenfranchisment
1. Racial Roots of Gun Control
2. Sullivan Laws
3. Amicus Cureum Brief

ix. Disparate Impact of "Local Rules"

x. Ambiguity and Rule of Lenity

xi. Unfettered Discretion

w. Equal Protection
   i. Privileges & Immunities (Saenz v Roe)
      1. FL Resident with FL license moving to MI
      2. People with unrestricted licenses visiting MI
      3. MI Citizen with FL License but no MI License visiting other States
      4. MI Citizen with FL License applying for MI license (full-faith and Credit)
         a. One "...other proper reason"
   ii. MI Citizen with MI Unrestricted CCW from other County moving to Kent County
      1. One "...other proper reason"
   iii. Retired Police Officer v Non-police officer
   iv. Peter Cook v Other business Owners
   v. FL Resident with FL license moving to MI
   vi. People with unrestricted licenses visiting MI
   vii. MI Citizen with FL License but no MI License visiting other States
   viii. MI Citizen with FL License applying for MI license (full-faith and Credit)
      1. One "...other proper reason"
      2. AG Opinion

x. Procedural Due Process
   i. Open Meetings Act Violations
   ii. Closed meetings
   iii. Non-disseminated Policy Manual
   iv. Hidden or closed-door decisions

v. Minutes but no transcripts so only record is skewed unless applicant writes all arguments
vi. Intimidating and daunting process and attitude of the board
    1. "need vs reason"
vii. Requirement of Training not in law
    1. Means applicant may qualify by State law but not by local rule.

y. Motion to Compel Answer to Interrogatories
    i. Did not properly answer questions regarding meaning of "good reason...other proper reason"
    ii. Did not provide spreadsheet with "race" information by type of application. They stated it would take too long.
        1. Not so, the race is a data field in their database and could be reported in ASCII delimited and then imported into an excel spreadsheet within 2 hours or less time.
    iii. Did not properly answer questions on make up of applicants by race, age, or sex.

4. Closing Remarks
    a. Move to grant upgrade to unrestricted
        i. Temporarily while awaiting decision
    b. Move to have Defendant Comply with OMA plus the following:
        i. Including publishing and handing out Policy manual (with new changes) to each applicant as part of their fee.
        ii. Transcripts or recordings or video tapes of each applicant

c. Move to have Defendant upgrade all restricted licenses to unrestricted where applicants originally requested unrestricted
d. Move to have Defendant actually limit discretion to threat assessment and other standards as set forth in MCL 28.426 and where reason is self-defense and applicant is otherwise qualified and not a threat by virtue of passed performance to grant an unrestricted license when requested.
e. Move to have "good reason...other proper reason" to be constructed to mean self-defense.
f. Request the Court to rule on all counts in Plaintiff's favor.

Dated this
15 day of
September,
2000

IN PRO PER
8220 PINEY WOODS
CALEDONIA, MI 49316
616-891-8336(H)
616-361-3686(F)
STEPHEN MARTIN
HICKEL

APPENDIX K

Letter from Petitioner

October 28, 1999

Kent County Concealed Weapons Licensing Board

Kent County Clerk's Office

300 Monroe, NW

Grand Rapids, MI 49503

Dear Sirs:

Thank you for considering my two previous requests for an unrestricted concealed weapons permit. In my first request, I gave you a potpourri of proper reasons to carry a concealed weapon. On my second request, I pointed out additional compelling information for your consideration to obtain the unrestricted CCW permit and hoped that you would combine that new factor to all the proper reasons in my first request. Since you have, to-date, only responded verbally to my two requests I can only assume that the reason you rejected both my requests was that my reasons on both requests failed to meet the boards standard of good cause (as you stated after rejecting my first application).

Frankly, I am at a loss. Because of the Board's charter, I would presume you would be familiar with all courts cases that would impact your decision process such that you would adapt to any significant new findings – especially one's that would cause a reevaluation of your standard operation procedures: automatic denial unless an applicant proves extreme need.

I perceived, in going through the required application process, that you consider extreme need to be about the only justifications that you accept – even though MSA 28.426 provides for "other proper reasons."

Two recent significant court cases that, in my opinion, should have changed your SOP from automatic denial to automatic acceptance, were the recent Appellate case U.S. v Emerson, 6:90-CR-103-C (5th Cir. 1999) and the Supreme Court ruling under United States v. Verdugo-Urqurdez, 110 S. Ct 3039 (1990). Both find that the Second Amendment is an individual right. Your grant of authority holds the following:

MSA 28.426, which in part states:

"...A license shall not be issued unless it appears that the applicant has good reason to fear injury to his or her person or property, or has other proper reasons...."

And the Second Amendment states the following:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

As you can know, your Charter evolved in the 1930's before these two court cases made it clear that the Second Amendment was an individual right. The US v. Emerson case even mentions a CCW case that validates the carrying of a concealed weapons as being an individual right. In any event, Strict Scrutiny would apply to the board's compunction to deny a law-abiding citizen a CCW permit.

So how does this affect the board? Obviously I an not a legal person, but I would think it should weigh heavily on your policies of automatic denial and of

renewing "other proper reasons" to be as simple as self-protection and desire to carry a concealed weapon.

Why change? As you are all familiar with Civil Rights laws under USC 42 and Title 18, the board's decisions would be subject to review under civil rights laws.

I understand how hard it is to keep up with current court rulings and am glad to have pointed out the above cases and their potential impact on your "business as usual."

I would assume that each of you took an oath to uphold the Constitution of the United States. It is not often that a chance to break an old habit, accepted in the past, but found to be a violation of the very oath you and I have taken can now be made right. It is to this that I plea for your wisdom and strength of character to do the right thing: support the Constitution of the United States of America. Concerns about the social costs of enforcing the Second Amendment should be as zealously guarded as the other individual liberties enshrined in the Bill of Rights.

Justice Scalia said, [even if there would be] "few tears shed if and when the Second Amendment is held to guarantee nothing more than the state National Guard, this would simply show that the Founders were right when they feared that some future generation might wish to abandon liberties that they considered essential, and so sought to protect those liberties in a Bill of Rights. We may tolerate the abridgement of property right and the elimination of a right to bear arms; but we should not pretend that these are not reductions of rights."] Finally, As [sic] Professor Ronald Dworkin has argued, what it means to take rights seriously is that one will honor them even when there is significant social cost in doing so. Protecting freedom of speech, the rights of criminal

defendants, or any other part of the Bill of Rights has significant costs—criminals going free, oppressed groups having to hear viciously racist speech and so on—consequently which we take for granted in defending the Bill of Rights, MSA 28.426 Sec 6.1 is unconstitutional because it allows the board without [a] particularized finding of a threat of future violence, to automatically deprive a citizen of his Second Amendment rights.

In view of the recent court rulings above, I urge you citizen to citizen, Officer to Officer, to reconsider my application for an unrestricted CCW permit. Please don't act to oppress my Civil Right, rather act to support the Constitution of the United States—I hope your duty is now clear. Thank you.

Sincerely,

Stephen M. Hickel

Applicant

Cc: National Rifle Association, Office of General Counsel

APPENDIX L

Letter from Petitioner

Concealed Weapons Licensing Board

County Clerk

November 4, 1999

Mr. Stephen M. Hickel

8220 Piney Woods

Caledonia, MI 49316

Dear Mr. Hickel:

Your letter of October 28, 1999 was reviewed by the Licensing Board at its November meeting. You have correctly asked the statutory authority which governs the Board's decisions.

MCL 28.426(1) requires that the Board shall not issue a license unless it appears that the applicant has good reason to fear injury to his or her person or property or has other proper reasons. As you are aware, the Board has determined that the criteria has not been met.

In light of your request for reconsideration, the Board will do so upon presentation of documentation from the Department of Navy or your Commanding Officer, which would support your need for a permit as a result of your military service related duties.

Absent some showing of need by the military, our decision stands,

Sincerely,

/sGary M. Gabry (P 29739)

Assistant Prosecuting Attorney

Acting for William A. Forsyth

APPENDIX M

Letter from Petitioner

November 11, 1999

Kent County Concealed Weapons Licensing Board

Kent county Administration Building

300 Monroe Avenue, N.W.

Grand Rapids, MI 49503

Dear Mr. Gabry:

Thank you for considering my three previous requests for an unrestricted concealed weapons permit. In my first request, I gave you a potpourri of proper reasons to carry a concealed weapon. On my second request, I pointed out additional compelling information for your consideration to obtain the unrestricted CCW permit and hoped that you would combine that new factor to all the proper reasons in my first request. You have now responded finally in writing to my third request with your letter dated 04 November 1999.

I am still of the opinion you are violating my civil rights as stated in the Second Amendment and upheld by the Supreme Court under *United States v Verdugo-Urquidez, 494 U.S. 259, 265 (1990)*. The Second Amendment protects "the right of the people to keep and bear Arms," and the Ninth and Tenth Amendments provide that certain rights and powers are retained by and reserved to the "the people." The Supreme Court interpreted the text of the Second Amendment and noted that the phrase "the people" in the Second Amendment has the same meaning in both the Preamble to the

Constitution and in the First, Fourth, Fifth, and Ninth Amendments. Anyway, perhaps in an effort to aid an amicable arrangement I propose the below:

In your 04 November 1999 letter, you stated "in light of your request for reconsideration, the Board will do so upon presentation of documentation from the Department of Navy or your Commanding Officer, which would support your need for a permit as a result of your military service related duties."

To set the record straight I told you in my meeting with you that a letter from the Navy would NOT be appropriate. This is a personal matter for personal security reasons and does not involve the Navy. As a civilian and high ranking officer in the military reserves, I pointed out that I was concerned for my personal safety as I was at a higher risk than the average citizen – it is that simple and as a side note, this was one of many reasons, not the only one. My purpose in the second letter was to inform you that I had found an exemption to your charter. I thought that would assist you in making a favorable decision on my behalf. My logic was that since I was obviously exempted by MSA 28.43a as a military reservist traveling to and from and during drill that it would be logical to extend that exemption to my non-drill time by the grant of a license.

I appreciate your willingness to grant me the unrestricted license to carry a concealed weapon on the conditions you stated in your 04 November 1999 letter. Since you are willing to grant it based on the exemption of MSA 28.432a for the "purposes of a military organization" then I would also believe that you would grant it based on another exemption to wit: possession of a legally obtained and current CCW permit from another State. After all, having another State permit is equal proof of my having satisfied proper reasons of a governmental body equal in

stature and authority to the US Navy and should be a suitable substitute for purposes of your charter to grant per MSA 28.426 (1) as having an "...other proper reason..." (see your letter 04 November 1999).

I believe that I have acted in good faith to negotiate a settlement of our differences and that all the issues have been clarified in this final personal request for an unrestricted CCW permit. I again entreat you to rule in my favor. It is the right thing to do. I await your favorable decision.

Sincerely,

Stephen M. Hickel

Applicant

Cc: National Rifle Association, Office of General Counsel,
Michigan United Conservation Clubs, General Counsel

APPENDIX N

Letter from Respondent

Concealed Weapons Licensing Board

County Clerk

December 17, 1999

Stephen M. Hickel

8220 Piney Woods

Caledonia, MI 49316

Dear Mr. Hickel:

Your letter of November 11, 1999 asking the Board to reconsider your application for an unrestricted concealed weapons permit has been reviewed at the December 2, 1999 meeting.

After careful consideration the Board unanimously voted to deny your request for an unrestricted concealed weapon permit.

If you have any questions in regards to this letter, please contact me at (616) 336-3554.

Sincerely,

/sKelly Lemiesz

Kelly Lemiesz

Office Administrator

APPENDIX O

SUPPLEMENT TO STEVE HICKEL'S APPLICATION FOR CONCEALED WEAPON PERMIT FROM THE KENT COUNTY CONCEALED WEAPON BOARD THURSDAY, MARCH 1, 2000

[Portions omitted to save paper]

Prepared by:

Kim Boersma Crozier

Rutgers & Mackraz PLC

Attorneys for Applicant

15 Ionia Ave, SW, Ste 650

Grand Rapids, MI 49503

1. Introduction

This supplement to Mr. Hickel's application for a concealed weapon permit is intended to be used by the board in rendering its decision to grant or deny Mr. Hickel a permit. While many of the following points will be discussed during the hearing, we intend this entire document to become part of the record in this matter.

Mr. Hickel has previously come before the board and was told that he met the board's criteria of "a suitable person" to be licensed. Therefore, the focus of this application will be Mr. Hickel's "good reasons" for receiving a concealed weapon permit.

II. ARGUMENTS OF LAW AND FACT SUPPORTING MR. HICKEL'S APPLICATION

Mr. Hickel is coming before this board to seek a permit under 2 theories:

Under the statue and the MI constitution, Mr. Hickel has a right to bear arms for self Defense, and

Mr. Hickel also qualifies under board's arguably higher standards, however lawful or unlawful they may be.

1. Mr. Hickel contends that he qualifies for an unrestricted permit under MCLA 28.426 and Article 1 section 6 of the Michigan Constitution as part of his right to defense of self and property.

Michigan Constitution 1963, Article 1 -- Declaration of rights, Section 6 (1992)

Every person has a right to keep and bear arms for the defense of himself and the state.

This is in the first article under the declaration of rights. The right appears after the right to freedom of speech and before the right against unreasonable searches and seizures. It is a broader right to keep and bear arms than the Federal Constitution, and lists self defense as right. Historically, Michigan has not had a restriction on a person's right to bear arms.

MCLA 28.426 sec 6(1)

A license shall not be issued unless it appears that the applicant has good reason to fear injury to his person

or property, or has other proper reasons, and is a suitable person to be licensed.

These cases are attached to the application. (See Group Attachment 1).

People v Brown – 253 Mich 537 (1931)

The constitutional right to bear arms is not limited to militiamen nor military purposes but extends to every person to bear arms for the defense of himself as well as of the state. Right to keep and bear arms is an individual right, the right exists to act in self defense, the state can reasonably regulate the right to prohibit ownership of weapons of mass destruction but may not regulate the right to outlaw tradition weapons such as rifles and pistols, and the state may not regulate the right to keep and bear arms in a way that has the practical effect of negating that right.

People v Zerillo, 219 Mich 635 (1922)

The exercise of a right guaranteed by the constitution cannot be made subject to the will of the sheriff. Legislature has no power to make it a crime for a person, alien or citizen, to possess a revolver for the legitimate defense of himself or his property.

Schubert v Debard Indiana Court of Appeals (1980)

Indiana was not a "shall issue" state at the time decision was made. Facts: Applicant denied a CCW permit for not have a proper reason. Applicant applied to carry for self-protections.

Indiana Law: If a person has a proper reason and is of good character and reputation and is a proper person to be licensed, the board shall issue to the applicant a license to

carry. Applicant claims that Indiana constitution affords him the right to bear arms for his own defense.

Issue: Where self-defense is properly asserted as the reason for desiring a firearms license, and the applicant is otherwise qualified, can a license be withheld upon an administrative official's subjective determination of whether the applicant needs defending?

Law: Indiana Art 1 sec 32 states: the people shall have a right to bear arms, for the defense of themselves and the state.

Analysis: It is well settled that we are to presume that constitutional language was carefully chosen to express the framer's intention. The constitution provides our citizenry the right to bear arms for their self-defense. In another Supreme Court case it was held that if it is determined that that applicant has met the conditions of the statute, the superintendent has no discretion to withhold the license.

In this case, it is clear from the record that the Board decided the application of [sic] the basis that proper reason vested in them the power and duty to subjectively evaluate an assignment of self-defense as a reasons [sic] for desiring a license and ability to grant or deny upon basis of whether applicant needed to defend himself.

Holding: Such an approach contravenes the essential nature of the constitutional guarantee. It would supplant a right with a mere administrative privilege which might be withheld simply on the basis that such matters as the use of firearms are better left to the organized military and police forces, even where defense of the individual citizen is involved. The reason of self defense stands unrefuted and a constitutionally proper reason within the meaning of the statute.

People v Swint, 225 Mich App 253 (1997)

This case acknowledged that other states, like Indiana, have constitutional right to bear arm provisions virtually indistinguishable from our constitutional language. This case pointed out that the Defendant did not claim that he is being deprived of his right to defend himself or the state – the issue was the constitutionality of the felon in possession of a firearm statute. The court said that the bearing of arms for any purpose other than defense of self or state is not accorded explicit constitutional protection.

2. Mr. Hickel contends that he qualifies for a general permit under the board's higher standard of "extreme necessity."

Mr. Hickel also qualifies under the board's arguably higher standards, however lawful or unlawful they may be [sic]

In it letters to all applicants, the board states: "It has been a policy of the board not [to] issue permits for other than hunting and target, except incases [sic] of extreme necessity." (See Attachment 2). Extreme reason is not good reason. The board has been delegated the duty to decide what constitutes good cause, not to set a higher standard than the law requires. (The board also requires that an applicant have weapons training, which also is not statutorily required) Further, MCL 28.426(5) states that the applicant for license shall state the *necessity or desirability* of carrying a pistol. How can this be reconciled under extreme necessity, much less good reason?

Mr. Hickel's reasons and qualifications for general permit:

1. He is a high-ranking officer of the Navy Reserve who is required to display rank and

military affiliation on his car while traveling – a required sticker is permanently affixed to his car which signifies Eagle [CAPTAIN] status. (See Attachment 3).

2. Under the Second Amendment he has a reasonable relationship to the preservation of the we-regulated [sic] militia, which is made up of [the] people who are its assets.
3. He has applied and received a Florida concealed weapons permit based on his character, weapons training, and having a right to self-defense.
4. [4-8. Omitted to save paper.]

9. Mr. Hickel has been the victim of past assaults as a civilian, while on base, and overseas, as well as a victim of an attempted robbery.

At one point, the board stated that Mr. Hickel should get a letter from a military supervisor stating his need for a permit. This letter would have no relations to Mr. Hickel's application because his need is personal in nature. He needs to protect himself at times when he is not on a base. His need (and right) for self-defense is because of his affiliation and position in the military – not as part of his job.

If the board adds all of these factors together, they constitute good cause or other proper reasons, and "extreme need" as interpreted by the board. Most importantly, they demonstrate his need and his right for self defense, as granted by the Michigan Constitution.

Self-defense is a constitutionally protected right – not just good cause. The right to defense oneself is need at the time of the threat, not after being attacked or having to go through permit process. This is not to say that a person who had had prior incidences isn't entitled to

receive a permit, but when the right to self defense is asserted, it should not be assessed in relation to the individual need. Law enforcement's knowledge of the community may be a factor but it is not the only way to determine.

The argument that ex law enforcement have greater right to self defense is not legitimate as threats to them are just as abstract and remote – just as a citizen who has had previous attacks can't predict the next one. Good reason to fear harm to one's person or property should not belong to ex law enforcement and those politically connected or influential individuals alone. (see Attachment 4) Interestingly, Florida's definition of law enforcement includes military personnel.

Violence is random and unpredictable. The board should not look beyond the need for self-defense where an applicant meets all other criteria. [The] [b]oards job is not to assess one's need for self-defense, but to determine who qualifies under the law.

The persons seeking permits are the law abiding ones. They have to be under the statue. The purpose of the law is and should be to exclude criminals from getting permits and that is already accomplished by the law.

The standard for good cause as extreme need is so high in Kent County that no one can qualify. Because of a policy of only allowing a select few the ability to possess, a precedent has been set and the board has not changed its position in light of more recent "shall issue" laws and policies – for instance Florida and Macomb County [Michigan].

It has been a policy in Macomb County since 1995, that a resident who passes a background check for criminal and mental history and completes a certified

safety course "shall be issued" a general CCW for their own personal protection. (see Attachment 5) Florida's 1987 reform law set off the modern wave of carry reform that has now been copied in many other states. Florida has collected the most detailed information about the impact of the carry laws. The new policy has ended the power of local law enforcement to deny persons from carrying weapons for arbitrary reasons. In response to the floodgates argument that under this standard the board will have to issue permits to all, under the 31 other shall issue states they should be granted permits, if they meet the other statutory requirements. This is the modern trend in licensing.

The legislative intent behind statue isn't to refuse law abiding citizens from obtaining permits, it is to make sure non-law abiding citizens don't get one. The rational that the intent behind the legislation is to prevent people from suddenly pulling out a weapon without prior notice to the victim more reasonably relates to the "suitable person" requirement, i.e., how a person handles weapons, their experience, training, and character, as opposed to good cause to understand the community and its needs, it must be understood that the need for self defense is individual. Self defense is not a criminal purpose, defense of property is not a criminal purpose.

III. MR.HICKEL['']S CLAIMS OF RELIEF

Should the board decide to deny Mr. Hickel an unrestricted permit he is prepared to appeal that decision on the following bases [sic]:

1. 1983 Civil Rights claim
2. Substantive Due Process violation: the statute as written and applid by the KCCCWB is a violation of his state constitutional right to bear arms.

3. Equal protection: the board has created an arbitrary classification of person who may receive a general permit, who are either ex law enforcement or politically influential or connected individuals.

IV. PERMIT [omitted to save paper]

APPENDIX P

Open letter to the State of Michigan's Department, the Kent Count Concealed Weapons Licensing Board

From

Stephen M. Hickel

02 March 2000

Thank you for taking the time to see me today. As you know my application remains in your hands. When I was recently asked about my desire and need for an unrestricted concealed weapons permit, I told a friend about it. He said, "Why do you need it?"

I said, "For self-defense."

"Why do you need it for self defense?" he asked.

"Because the State of Michigan says I have a fundamental right to bear arms for self defense." I replied.

"Yeah, well anyone could get a concealed weapons permit then," he said.

"So what? As long as they are otherwise qualified for the permit by requirements of law that means they have passed muster and should be granted a permit. What is wrong with that? Besides, the board is there to act as a filter – to prevent felons, crazy people, and spousal abusers from legally carrying a weapon. What further interest do they have in restricting permits?" I asked him.

I went on to explain to him how the existing State CCW law, MCL 28.426 came about in its original form in the mid to late 1920's. Back then racial discrimination was

rampant. Minorities were not held in equal esteem back then. One of the impetus for the existing law was an incident that provided a series of laws meant to keep guns out of the hands of minorities. In that incident an African-American doctor moved to a Detroit, MI neighborhood. One night after work he arrived home to find a riot in progress in his front yard. The police were there. He made his way into his home and found several family members quite concerned about the mob in his front yard. He went up stairs to his front bedroom window and while looking out, a rock burst through the glass. Not seriously injured he pulled his revolver out. As things worsened, he, his brother, and other friends and family shot into the crow advancing on the house and killed 11 people. Yet, when he and his family members were arrested, the charges were all eventually dropped as no jury would convict them for self-defense. It was soon after that though that the law that brings me here today was passed.

It is strange how a law designed with great statutory ambiguity for the original purpose of racial discrimination in the early 20's still is in force today, the age of diversity. Even more odd, is how that same statutory ambiguity has managed to deny me an unrestricted concealed weapons permit.

As I told you in my last several letters, I am interested in obtaining an unrestricted permit. New information has become know and my attorney will go over that with you. I will state officially that my good cause or other proper reason is for personal self-defense seven days per week, 24 hours per day. The law allows me to carry a concealed weapon at home, at work, or on my property. It has further provided for carrying in other locations by way of permit and that is the reason I am back here today. But in the interest of working with the boards more stringent requirement than MCL 28.426 6.1 requires, I will be glad to answer any questions as to my ne information and

reinforce the importance of previously submitted information.

Three last points. I believe the board generally wants to grant unrestricted permit but found that when ever you did that in the past that it opened you up to equal protection complaints, such that you gave one to her, why not me? This would explain how over time you have so tightened your standards for the unrestricted permit that only judges and retired police have them (with two or three exceptions). You are so concerned about not looking as though you are arbitrary or capricious that you now essentially turned off the spigot to all except those t[w]o non-suspect classes. In other words, your desire to be fair and consistent in an administrative process has contravened a constitutional guarantee of self defense for all otherwise qualified applicants who are not retired police officers or judges. You apparently feel compelled to grant unrestricted permits but do so to only that one subset of the general public. You do so apparently on the basis that they are known by you to have good reason to fear for life or proper[ty] or have other proper reasons. BUT, I hold that if you strip naked or expose the *a priori* of why these otherwise qualified applicants who received permits want them, you would find self-defense as the good cause or other proper reason.

Therefore, I hold that in your desire to not be arbitrary or capricious you have developed a rationalization to grant unrestricted permit to but one professional classification, thereby completely ignoring any other classification. From you[r] point of view, I suspect, this is completely justified. After all, who is better suited to the carrying of a concealed weapon but a retired police officer. From my point of view, this defies logic. You hold a dual standard for what amounts to two classification of common ordinary citizens. In all cases where each applicant from either classification is otherwise qualified by law to carry an

unrestricted permit, the only difference between the ones who do an the one who don't boils down to a dissection of their reasons for self defense. If a retired police, grant. If not a retired police, determine if need is above-extreme, then grant. If need is extreme or below, offer restricted or don't grant.

Thirty-one states issue permits to otherwise qualified applicants when the reason is simply self-defense. Michigan is in the minority. It seems that the State of Michigan forces its citizens to come to a state gun board in their respective counties only to find the treatment is unequal from county to county (Macomb County is a shall-issue county meaning when an applicant is otherwise qualified, they are granted an unrestricted permit – and their crime rate has gone done significantly as a result of that).

That a Florida permit holder from Florida can carry a concealed weapon in Michigan, but I, who hold a Florida permit, can not carry a concealed weapon in Michigan without at first obtaining a Michigan unrestricted permit, also defies logic – and that my possession of an unrestricted Florida permit isn't in itself sufficient good cause or other proper reason also is perplexing.

That means equal protection is denied at three levels:

- Ordinary citizen non-retired police officer to ordinary citizen, retired police officer who were both otherwise qualified and who both gave self-defense as a reason.
- County resident to count resident, who are otherwise qualified and used self-defense as a reason.
- State resident to another state resident, who both gave self-defense as their reason and were

otherwise qualified and who both hold the same permit.

To wrap up, it seems that the gun board is the only place I can hang my hat to receive an unrestricted permit that can be used in Michigan. The above-extreme standard of only issuing to virtually only retired police officers (and judges) and not an equal number of administrative process and an appearance of fairness and consistency above a constitutional guarantee.

I am ashamed of this practice. It conflicts with any semblance of command sense and decency that I have. I don't hold much hope for my own application even though my reason of self defense is equal to those to who you have granted. I urge the board to change their practice of holding their standards so high that only one subclass of non-suspect citizens qualifies. Times have changed. Other states have proven that concealed weapons in the hands of law-abiding citizens reduces crime and don't pose a threat to the citizenry at large, rather they actually help lower crime.

Please re-lower your standard of above-extreme back to "good standard." If that means issuing more unrestricted permits, so what? As I see it, your job has never been to restrict permits to the least [most] amount of people, rather to filter applicants to those people who are responsible law-abiding citizens who want it for personal self defense. I firmly believe that you don't have the basis to look under the reason of self-[de]fense. This has worked in 31 other states. It is your power to change it in Kent County, Michigan. Please approve my application for an unrestricted permit. I also invoke the rule of Lenity, which is to say that the statutory ambiguity of MCL 28.426.6.1 needs a much stricter construction such that self-defense of an otherwise qualified applicant is considered good cause or other proper reason.

Thanks you,

s/Stephen Hickel

Steve Hickel

APPENDIX Q

Respondent's Answers to Petitioner's Interrogatories during the Writ in the Circuit Court dated August 31, 2000

(Partial, pertinent questions presented)

Three. Did the board find a particularized threat by the Plaintiff in their investigation or interview with the Plaintiff? If yes, what?

Answer: No. The board found "no apparent need" initially. After further submissions and discussion, the Board found reason to grant a restricted permit for target and hunting and for banking and business purposes.

Fourteen. When deciding whether to issue an unrestricted license to carry a concealed pistol, does the Concealed Weapon Licensing Board tak into consideration Article 1, Section 6 of the Michigan Constitution of 1963? If so, how?

Answer: The constitutional right to keep and bear arms is separate and different from an application to carry a "concealed" weapon under MCLA 28.426.

Twenty-one. For what reason was the Plaintiff's July 1999 application to carry an unrestricted concealed pistol denied by the Concealed Weapons Licensing Board?

Answer: "No need apparent" – date of find 9/2/99

Twenty-eight. Does the Defendant (sic) find that the meaning of "shall not issue unless...has good reason...." Is often misinterpreted by applicants for an unrestricted license?

Answer: Most persons who file applications seem to have an honest belief that they have a good reason to apply for a permit. The Board does not always agree.

Thirty-nine. What part of MCL 28.426 6.1 specifically does the Defendant (sic) believe or think you derive your broad powers of discretion from? Cite the phrase or phrases?

Answer: See # 38 [which refers to Hanselman v Killeen, 419 Mich 168,351 NW2d 544 (1984)]. There are many decisions and arguments existing on this point. There are enough to fill briefs of substantial size. The Defendant is not obligated to act as researcher for an unrepresented Plaintiff.

Fifty-one. If an applicant is otherwise qualified, does the reason of self-defense stand sufficient to issue an unrestricted license?

Answer: The statue says an applicant must have a good reason to fear injury to his person or property, or has other proper reason. The Board must apply those standard to "self-defense," just as any other reason, on a case by case basis.

Fifty-seven. Does the Defendant believe their duty in MCL 28.426 has anything to do with a citizen's right to self-defense with a weapon? If not, why not? If so, why?

Answer: MCLA 28.426 deals with the regulation of concealed weapons which is a separate and distinct issue from the constitutional right to keep and bear arms or right of self defense.

Seventy-one. Is the right to keep and bear arms an individual right or a collective right? Why?

Answer: As we have said before, the right to keep and bear arms is separate and distinct from permission to carry a concealed weapon. Beyond this question is vague and unclear and cannot be answered.

Seventy-two. Is the right to keep and bear arms for self-defense and individual right for self-defense?

Answer: This is an issue that has no relevancy to granting a concealed weapons permit. MCLA 28.426 controls concealed weapons permits. The right to keep and bear arsm is a separate question.

Seventy-six. Is the right to keep and bear arms a full-time right? If not, why not?

Answer: The right to keep and bear arms has nothing to do with MCLA 28.426 which deals with concealed weapons and transportation of weapons in a motor vehicle.

Ninety-six Does the Defendant ever make any exceptions to there standard of not issuing licenses to just law enforcement related persons? If yes, when?

Answer: See #88. There a no standards outside MCLA 28.426.

APPENDIX R

CONCEALED WEAPONS RESTRICTIONS SUMMARY REPORT (PARTIAL)

LICENSES ISSUED IN 2000

SORTED BY: RESTRICTION:

Total	Restriction	Description
39	GENERAL	RETIRED POLICE OFFICER
1	GENERAL	RETIRED FEDERAL AGENT
8	GENERAL	RETIRED POLICE OFFICER
1	HUNTING & TARGET & BUSINESS & BANKING PURPOSES [PETITIONER'S]	
197	HUNTING & TARGET, UNLOADED IN TRUNK DURING TRANSIT	
1	TO, FROM, AND WHILE ON DUTY FOR JVA ENTERPRISES, HUNTING & TARGET UNLOADED IN TRUNK DURING TRANSIT	

[REMAINDER ARE 1 OR TWO OF A KIND 90% OR MORE DIFFERENT THAN EACH OTHER]

APPENDIX S

[LETTER BY CARL MARLINGA, A PROSECUTOR FOR ANOTHER MICHIGAN COUNTY WHO WENT BY CONSTITUTIONAL STANDARDS AND SUBMITTED BY PETITIONER'S ATTORNY IN HER SUBMISSION TO THE BOARD MARCH 1, 2000]

Carl J. Marlinga

PROSECUTING ATTORNEY

MACOMB COUNTY, MICHIGAN

[ADDRESS OMITTED]

September 27, 1995

Members of the Macomb County

Concealed Weapons Licensing Board

40 N. Main, 1st Floor

Mt. Clemens, Michigan 48043

Dear Members of the Board,

This is an opinion letter explaining the constitutional and statutory guidelines I will rely upon in all future applications to come before the Macomb County Concealed Weapons Licensing Board. This letter is binding upon my representative. Other members of the board are free to adopt in whole or in part or to reject it in whole or in part; but I do ask that the other members

carefully consider the constitutional issues addressed and be guided accordingly.

It is my opinion that the Concealed Weapons Licensing Board statute, MCLA 28.4236, must be interpreted and applied in a way that respects and fully effectuates Article 1 Section 6 of the Michigan Constitution of 1963. Accordingly, I will not require that an applicant make a showing of a specific or unique threat to justify the issuance of a prmit, but rather will vote in favor of gernal permits for personal protection if it appears that the person meets the statutory requirements and isa "suitable person to be licensed" as those words are used in MCLA 28.426.

The starting point for my analysis is Article 1 section 6 of the Michigan Constitution of 1963, which reads as follows:

> *Every person has a right to keep and bear arms for the defense of himself and the state.*

As is well known, the Second Amendment to the United States Constitutions contains similar language, i.e., "A well regulated Militai, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."; but as a state official it is not necessary to look beyond my own state's constitution for guidance. Of course, if a conflict existed, the U.S. Constitution would take precedence; but where no conflict exists, as here, the words of the state constitution will suffice.

It should be noted, in passing, that the Second Amendment is not one of those amendments which have been held to be binding on the States by operation of the due process clause of the Fourteenth Amendment. See United States v Cruikshank, 92 US 542, 23 L Ed 588

(1876); Presser v. Illinois, 116 US 252, 6 S. Ct. 580, 29 L Ed 615 (1886); Miller v Texas 153 US 535, 14 S Ct. 874, 38 L Ed 812 (1893); and recently Quilici v. Village of Morton Grove 695 F 2d 261 (7th Cir. 1982). It could be argued, however, that while the right to keep and bear arms is a right secured to the people aginst the national government by the Second Amendment, it is also a right secured to the people against stat governments by operation of the Ninth Amendment, namely: "The enumeration in the Constition of certain rights, shall not be construed to dney or disparage others retained by the people."

In any event, it is clear that the Michigan Constitutional Convention which adopted the Constitution of 1963, had the power to adopt Article 1, section 6, whether or not the U. S. Constitution's Second Amendment ever existed.

According to the official 1963 Constitutional Convention comments, the wording of the Article 1, section 6, was taken from the prior (1908) constitution except for the insertion of the words "keep and" which were added to bring this section into conformity with similar provisions in the U.S. Constitution.. In the 1908 Constitution this right was set forth in Article 2, section 5. The 1908 provision was taken word for word from the 1850 Constitution Article 18, section 7 which had been taken word for word from the 1835 Constitution Article 1, section 13. Since the inception of the state, therefore, the right to bear arms for the purpose of defense of oneself and the state has been a constitutionally protected right.

For interpretation purposes, it is fortunate that the 1963 Constitutional Convention added the words "keep and." This means that the delegates in 1963 actually thought about the language, which, in turn, buttresses the standard legal presumption that drafters of a constitution,

statute, or other document are presumed to be using words in a way consistent with their everyday plain meaning. (The cases applying the principle are legion. Se for example Detroit Base Coalition for Human Right of Handicapped v. Department of Social Services 431 Mich 172, 428 NW 2d 335 (1988); Town & Country Dodge, Inc. v. Department of Treasury 420 Mich 226, 362 NW 2d 618 (1984); In re Certified Questions from U.S Court of Appeals for the Sixth Circuit in Karl v Bryant Air Conditioning Company 416 Mich 558, 331 NWS 2d 456 (1982); and American Telephone & Telegraph Company v Employment Security Commission 376 Mich 271, 279; 136 NW 2d 889 (1965) (opinion of O'Hara, J.).) A right to keep and bear arms, therefore, could also be stated as a right to keep and carry arms. In 1963 the word bear had the same meaning it does today. Webster's Third New International dictionary, copyright 1961, defines bear as follows:

> *(a): to move while holding up or supporting often with effort or special care: Carry...(b): to be accoutered or fitted out with: carry as equipment...*

The constitutional right, therefore, obviously extends beyond the mere right to posses a firearm in one's won house or place of business. Although constitutional rights are often said to be subject to reasonable regulation, no regulation can be deemed reasonable if its effect is to cancel out part of the protected right. (See People v. Zerillo and People v Brown discussed below; also, generally, see Panhandle Easter Pipe Line Company v. State Highway Commission 294 US 613, 55 S. Ct 563, 79 L Ed 1090 (1935).) To give effect to the plain meaning of the words of Article 1, Section 6, there must be a right to "carry"' and although that right can be regulated it cannot be regulated in such a way that carrying becomes and impossibility for the vast majority of citizens.

Case law in Michigian interpreting Article 1, section 6 (or its predecessors) is sparse. The leading cases on the issue are discussed below.

In People v Zerillo 219 Mich 635, 198 NW 927 (1922) the Michigan Supreme court struck down a provision of the state hunting and game law making it a crime for an unnaturalized foreign-born resident to possess a firearm without a permit from the county sheriff. The court held that foreign-born aliens had the same rights as natural-born citizens to possess firearms under Article 2 section 5 of the 1908 Michigan Constitution; outlawing the possession of firearms as to any person residing lawfully in the state. The Court said (219 Mich 635, 638):

> Firearms serve the people of this country a useful purpose wholly aside from hunting, and under a Constitution like ours, granting to aliens who are bona fide residents of the State the same rights in respect to the possession, enjoyment and inheritance of property as native-born citizens, and to every person the right to bear arms for the defense of himself and the State, while the legislature has power in the most comprehensive manner to regulate the carrying and use of firearms, that body has no power to constitute it a crime for a person, alien or citizen, to possess a revolver for the legitimate defense of himself and property.

In People v. Brown 253 Mich 537,235 NW 245 (1931) the Michigan Supreme Court upheld the validity of a statue outlawing the possession of machine guns, silencers, bombs, blackjacks, metallic knuckles and other specified weapons. (The defendant in this case had been arrested and convicted for carrying a blackjack.) The Court first discussed the authorities and arguments which sought to

limit the scope of the right to bear arms to members of the state militia. It regjected those arguments saying (253 Mich 537, 539-541):

> It is generally recognized that the constitutional declaration, in both Federal and State constitutions, of the right to bear arms had its original in the fear of the American colonists of a standing army and its use to oppress the people, and in their attachment to a militia composed of all able-bodied men. Probably the necessity of self-protection in a frontier society also was a factor.
>
> Some courts have been so impressed with the historical background that they have held that the constitutional protection covers the bearing of such arms only as are a customary part of the equipment of a militiaman; and , in City of Salina v. Blaksley, 72 Kan 230 (83 Pac. 619, 3 L.R.A. (N.S.) 168, 115 Am. St. Rep 196,7 Ann. Cas. 925), it was decided that the legislature may prohibit the bearing of arms anywhere except in a military organization provided for by law. It is interesting to note that pistols and revolvers seem to have given these courts trouble in the application of the militia test. On the other hand, some courts, for various reasons, have extended the protection to weapons of all descriptions. The authorities cannot be reconciled except in respect of the proposition, that, regardless of the basis of the right to bear arms, the State, nevertheless, has the police power to reasonably regulate it. 28 Harvard Law Review, 473; Aymette v. State 21 Tenn. 154; Nunn v. State 1 Ga. 243; Ex Parte Thomas,1 pIkla. Cr 210 (97 Pac 260, 20 L.R.A. (N.S.) 1007); 40 Cye p 853; 14 L.R.A. 600: 32 L.R.A. 606; 3 L.R.A. (N.S.) 168; 20 L.R.A. (N.S.) 1007; 36 L.R.A. (N.S.) 115; L.R.A. 1917C, 60, and notes.

> When the bulwark of State defense was the militia, privately armed, there may have been good reason for the historical and military test of the right to bear arms. But in this State the militia, although legally existent, and composed of all able-bodied male citizens, 1 Comp. Laws 1929, section 629, is practically extinct, nad has been superseded by the Nation guard and reserve organizations. If called to servise the arms are furned by the State, 1 Comp Laws 1929, section 633. In times of peace the militia, as such, is unarmed and the historical test would render the constitutional provision lifeless.
>
> The protection of the Constitution is not limited to militiamen nor military purposes, in terms but extends to 'every person' to bear arms for the "defense of himself" as well as of the State. This includes the right of a foreigner to possess a revolver for the legitimate defense of his person and property, subject, however, to the valid exercise of the police power of the State to regulate the carrying of firearms. People v. Zerillo, 219 Mich. 635 (24 A.L.R. 1115).

Having reached its conclusion that the constitutional right to bear arms extends to all persons, the Court nevertheless held that the right can be reasonably restricted to the types of weapons which "by command opinion and usage of law-abiding people, are proper and legitimate to be kept upon private premises for the protection of person and property." (253 Mich 537, 541.) The full reasoning of the Court is as follows (253 Mich 537, 541):

> Some arms, although they have a valid use for the protection of the State by organized and instructed soldiery in times of war or riot, are too dangerous to be kept in a settled community by individuals, and, in times of peace, find their use by bands of

> criminals and have legitimate employment only by guards and police. Some weapons are adapted and recognized by the common opinion of good citizens as proper for private defense of person and property. Others are the peculiar tools of the criminal. The police power of the State to preserve the public safety and peace and to regulate the bearing of arms cannot fairly be restricted to mere establishment of conditions under which all sorst of weapons may be privately possessed, but it may take account of the character and ordinary use of weapons and interdict those whose customary employment by individuals is to violate the law. The powers is, of course, subject to the limitation that its exercise be reasonable and it cannot constitutionally result in the prohibition of the possession of those arms which, by common opinion and usage of law-abiding people, are proper and legitimate to be kept upon private premises for the protection of person and property.

The Brown and Zerillo cases are the most complete statements in Michigan jurisprudence on the Michigan Constitution's guarantee of the right to keep and bear arms. Other cases in which the constitutional provisions have been raised were easily decided on the strength of the Brown and Zerillo precedents.

From Brown and Zerillo the following principles emerge:

> (1) The right to keep and bear arms is an individual right, enjoyed by citizens without regard to the existence of the militia.
> (2) The right exists so that person may act in self-defense.
> (3) [T]he state may reasonably regulate the right so as to prohibit ownership of

> weapons of mass destruction but may not regulate the right to outlaw tradition weapons such as rifles and pistols.
>
> (4) The state may not regulate the right to keep and bears arms in a way that has the practical effect of negating that right.

The Michigan legislature has enacted a statue, MCLA 28.246 [sic], creating a board in each county having the authority to grant licenses to persons who wish to carry concealed weapons. The statute also sets forth the qualifications for licenses in the first subsection, MCLA 28.246 (1) [sic; should be 426]:

> (1) The prosecuting attorney, the sheriff, and the director of the department of state police, or their respective authorized deputies, shall constitute boards exclusively authorized to issue a license to an applicant residing within their respective counties, to carry a pistol concealed on the person and to carry a pistol, whether concealed or otherwise, in a vehicle operated or occupied by the applicant. The county clerk of each county shall be clerk of the licensing board, which board shall be knows as the concealed weapon licensing board. A license to carry a pistol concealed on the person or to carry a pistol, concealed or otherwise , in a vehicle operated or occupied by the person applying for the license, shall not be granted to a person unless the person is 18 years of age or older, is a citizen of the United States, and has resided in this state 6 months or more. A license hall not be issued unless it appears that the applicant has good reason to fear injury to his or her person or property, or has other proper reasons, and is a suitable person to be licensed. A license shall not be issued to a person who was convicted of a felony or confined for a felony conviction in this state or

> elsewhere during the 8-year period immediately preceding the date of the application or was adjudged insane unless the person was restored to sanity and so declared by court order. [Qualifications are set for above in bold type.]

The statue contains no guidelines to assist the members of the board in determining whether or not an applicant should be licensed, other than "that the applicant has good reason to fear injury to his person or property, or has other proper reasons, and is a suitable person to be licensed." Subsection (5) of the statue does say, however, that the reasons for granting the license should be specific enough to appear on the face of the license (MCLA 28.246(5)) [sic]:

> The application for a license shall state the reason or reasons for the necessity or desirability of carrying a pistol concealed on the person or a pistol, whether concealed or otherwise, in a vehicle operated or occupied by the person applying for the license, and the license, if issued shall be restricted to the reason or reasons satisfactory to the board, which restriction or restrictions shall appear on the face of the license in a conspicuous place. The license shall be an authorization to carry a pistol in compliance with this section only to the extent contained in the face of the license and the license shall be revoked by the board if the pistol is carried contrary to the authorization.

If a statue has ambiguous or conflicting language it must be read in a way that reconciles the words to give it a consistent and rational meaning. (In re State Highway Commission, 383 Mich 709, 178 NW 2d 923 (1970); Lorraine Cab v. City of Detroit, 357 Mich 379; 98 NW 2d

607 (1959); Arbor Sales, Inc. v Department of Treasury, 104 Mich App 181 (1981). In this statue the qualifications for an applicant are addressed at several places. Reading all of these qualifications together produces the following:

(1) The applicant must be 18 years of age or older.
(2) The applicant must be a citizen of the United States.
(3) The applicant must be a resident of Michigan for at least 6 months.
(4) The applicant must not have been convicted of a felony nor have completed a term of imprisonment for a felony in the last 8 years.
(5) The applicant must never have been adjudged insane – unless a court order exists declaring that the applicant was restored to sanity.
(6) The applicant must have a reason that fairly satisfies at least one of the following:
    a. The person has good reason to fear injury to his or her person.
    b. The person has good reason to fear injury to his or her property.
    c. The person has good reason other than fear of injury to person or property.
(7) In applying the above tests, it is not required to show a necessity for a permit; desirability will suffice.
(8) Even after the above tests have been met, the person must still be regarded as suitable.

The leading case interpreting the statue is Bay County Concealed Weapons Licensing Board v Gasta 96 Mich App 784, 293 NW 2d 707 (1980). In that case the Bay County Concealed Weapons Licensing Board revoked the license of a person who had been convicted of the misdemeanor offense of intentionally pointing a firearm at another person without malice. The licensee filed a civil complaint against the board seeking reinstatement of his license. The Bay county Circuit Court granted judgment for the licensee, holding that the licensee had been denied

procedural due process in the license revocation procedures. In particular the Bay county Circuit Court held that a board comprised of the prosecutor, the sheriff, and a representative of the state police commissioner created an intolerably high risk of bias against licensees in revocation hearings. The board appealed.

On appeal the Court of Appeals reversed, holding: (1) that the existence of the concealed weapons board was a legitimate and reasonable restriction on the constitutionally guaranteed right to bear arms; (2) that the composition of the board did not deny due process since the legislature had the right to designate those law enforcement professionals who were best able to assess community needs and problems with respect to the ownership and use of weapons; (3) that a licensee's interest in a license is not equivalent to the interest a person would have in a liquor license, a driver's license, or welfare benefits and that, accordingly, the same due process procedural safeguards are not necessary; (4) that the issuance of a concealed weapons permit is dependant on the existence of certain facts and circumstances at the time of the issuance which show a temporary need and the permit is issued only for the limited time those reasons exist; and (5) that the concealed weapons board has the exclusive authority to issue, deny, and revoke permits for concealed weapons.

The effect of the Bay County case is to give wide discretion to each county's concealed weapons licensing board. My personal opinion is that the case was not well decided, and that the better reasoning is evident in the lower court's opinion. Also, not addressed in either opinion is the constitutionally suspect absence of standards or the excessive subjectivity of the standards, in the statute. It is true that the Court of Appeals in People v. McFadden 31 Mich App 512, 188 NW 2d 141 (1971) did say that the standards, such as they were, were in fact sufficient to pass constitutional muster, but with the language being as broad and subjective as it is, it is no wonder that many

citizens believe gun board decisions are based on whim, caprice, and favoritism.

With these cases as the only guide it is the responsibility of each prosecutor, sheriff, and state police officer who sits on a gun board to give effect to the statute, being ever mindful of the co-existing primary obligation to preserve, protect, and effectuate the basic law of the state as express in Article 1, Section 6.

The holding of the Court of Appeals in the Bay County case does not require a given result in any specific case brought by an individual applicant. Bay County says that gun boards have discretion. Although some could read Bay County as legitimizing the use of discretion to limit the scope of Article 1, Section 6, the better interpretation is always the one that expands rather than limits constitutional protections.

Accordingly, I believe that the only proper interpretation of MCLA 28.426 is the one that applies its provisions in a manner consistent with the rights set forth in Article 1, Section 6.

Therefore, there is a right to carry a weapon on one's person to allow the person to act in self defense, and that right can only be regulated by a concealed weapons board; it cannot be eliminated.

Using standard statutory interpretation, the board cannot deny such right in the guise of regulation if a person presents a "good reason" why it is "desirable" to carry a firearm. The good reason could be for protection from injury to person or property, but it is not limited to those reasons. But certainly, if a person does seek a permit to carry a weapon for self-defense, such reason must be sufficient sicne the Constitution in Article 1, Section 6, specifically approves the standard.

The remaining standard, namely, that the applicant be a 'suitable" person is to subjective to be fair or workable. Nevertheless, since the McFadden case says it is a sufficient standard under the Constitution, it may not simply be discarded. A bill now pending in the State

House of Rpresenetatives, H.B. 4720, offers a much better and constitutionally satisfying set of criteria. Essentially this bill permits a board to deny an applicant who has been convicted of a felony, or who was adjudged to be mentally incompetent or suffering from a serious mental disease or defect, or who is likely to be stated in writing and must be capable of proof sufficient to satisfy a probably cause standard. Once again, since the Bay County case does not direct a gun board official how to use his or her discretion, I will voluntarily adopt the criteria of the referenced bill as the wisest and most objective criteria offered to date.

CONCLUSION

In the absence of favorable action by the legislature on House Bill 4270, it is necessary to interpret the existing law, MCLA 28.426, in a manner that is most consistent with the Michigan Constitution Article 1, Section 6. This necessarily means that general permits must be available for self-defense purposes, if the applicant meets the statutory requirements and is a suitable person to be licensed.

Very truly yours,

s/Carl J. Marlinga

Prosecuting Attorney

Macomb County, Michigan

APPENDIX T

STATE OF MICHIGAN

SUPREME COURT

STEPHEN MARTIN HICKEL
Kent County No. 00-05186 AS/MCA231199
Plaintiff/Appellant,

Michigan Supreme Court

v

No. 123302

KENT COUNTY CONCEALED WEAPONS LICENSING BOARD AND IT DELEGATES,

Defendants/Appellee,

_____/

IN PRO PER
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REPLY BRIEF TO APPELLEE'S BRIEF IN OPPOSITION TO APPELLANT'S APPLICATION FOR LEAVE TO APPEAL TO MICHIGAN SUPREME COURT

[TOC and TOA omitted to save space]

GLOSSARY

The glossary is provided to clear up any confusion created by the lower tribunals and the Appellee who simply eschewed the Appellant's argument as being too confusing and equal to the absolute right theory. Nothing could be further from the truth. The below glossary will help delineate the concepts of the Appellant.

Safe-Society Doctrine.

The Safe-Society Doctrine is the concept introduced by the Appellant that states that the underlying reason for the right to bear arms for defense of self and state is that society will be safer if the people bear arms for defense of self and state. This is so fundamental that the founding fathers and authors of two constitutions sought to protect this right. As such, this doctrine is fundamental to the security of the United States and the State and the individual. This doctrine specifically limits any restriction of the police power to be limited to compelling state interests that don't violate the doctrine. As an example, since the legislature has created restrictions called gun-free zones on where a licensed citizen can carry a pistol, it directly contravened the safe-society doctrine because they are in essence saying that the individual and state

will be safer if the individual doesn't bear an arm in those zones.

Unrestricted License.

The right was controlled by the license; the law only provided for one license. The license, which had no restrictions, either by purpose or gun-free zones, was the license that the legislature intended to be granted if an applicant qualified under the law. This is the right for which the Appellant sued. At the time the law was drafted they did not intend nor conceive that the county gun boards created by MCL 28.426 would issue a large variety of license types based on the "needs" of the applicant for self-defense.

Restricted Licenses.

Represent the restrictions put on the right by the Appellee and, under the new law, by the legislature. The restricted licenses (25 varieties issued by the Appellee) are those restrictions to the right that the Appellee and other county gun boards, comprised of just law-enforcement persons created in ultra vires to legislative authority that restricted the right to bear arms based on the needs of the applicant for self-defense. In other words, the restricted license was a creation of the Appellee to prevent as many persons as possible from receiving "the license" intended by the legislature when they passed MCL 28.426. The Appellee admitted to this on the record. Under the new law, the legislature created restrictions that heretofore had not been attached to the Appellant's right. It is this issue of legislative restrictions attached to a right while he was suing for an even less restricted right that is undisputed material facts that are on the record and before this court for review in addition to the above. The constitutionality of licensing of an arm carried for defense of self and the state are properly before this court for review. If licensing leads to the constitutional repugnancies that the Appellant has experienced at the

hands of the State then licensing itself is constitutionally repugnant as it applies to the bearing of an arm for defense of self or state.

Concealed Pistol License.

Is what the Appellee and lower courts claim is the compelling interest of the state to keep felons and mentally unstable persons from carrying a pistol in a concealed manner. Taken in conjunction with all other Michigan laws, the CPL or CCW license is the only means a Michigan citizen who was eligible for constitutional rights could realistically carry a gun in public. Without a license the citizen could not transport a loaded weapon in a vehicle, making the license the only means a citizen could exercise their constitutional rights to bear a gun for defense of self or state. The license must mirror the right. Without the issuance of a license the citizen is in reality denied their right to bear a gun for self-defense. When the legislature puts requirements on the issuance of the license, it must adhere to constitutional principals and only do so for a compelling state interest, one that doesn't violate a citizen's right to bear an arm for self defense or defense of the state. The Federal Constitutional right to bear an arm is also a restriction on the State to not infringe the right to bear an arm. Because it is the license that controls restrictions, it is the license that has created this dilemma of restrictions, requirements, and predeterminators for the bearing of an arm for defense of self and state. It is what caused the courts and the Appellee to establish all manner of restrictions on what is simply an explicit constitutional right and what prevents the courts from moving in favor of the Appellant. Licenses with non-compelling restrictions and that expire are simply constitutionally repugnant.

Absolute Right to Bear Arms.

Is one in which the Right to Bear an Arm for other than self-defense of defense of state exists. In other words, the

absolute right is one in which any person is protected for any purpose. The Appellant has never claimed he has the absolute right.

The Full-time Right to Bear Arms.

When a citizen who is not a felon nor mentally ill or a spousal abuser under a court order desires to exercise their right to bear an arm for defense of self or the state or as handed down to the state by the Federal Constitution then they are protected by this right, because any infringement to this right must be for a compelling state interest and that interest can't be because society will be safer if the person doesn't bear an arm for defense of self or state -- what the Appellant calls the Safe-Society Doctrine. This is also called the fundamental right to bear an arm for defense of self or state. The pistol is a protected weapon. State v Kessler, 289 Or. 359 (1980) went into this in depth. Since a pistol is patentable for use in self-defense, it is protected by two constitutions. Finally, when the reason to bear an arm is self defense, this reason is constitutionally protected. When you combine the three above elements you have the full-time right. Any restriction to the full-time right can only be revoked or restricted by the state proving a compelling state interest that doesn't violate the safe-society doctrine. Where the state infringes this right, they are subject to de novo reviews and strict scrutiny. The Appellate court confused his claim of full-time right with the absolute right.

Gun-free Zones.

Gun-free zones were those zones in MCL28 that included hospitals, churches, bars, restaurants, cars, and so forth that applied to person who did not have a CPL or CCW under MCL 28.426. In other words, if you had a CPL, even if limited to just hunting and target and business and banking purposes, you could carry into these gun-free zones. The new law passed while the Appellant was suing for fewer restrictions was subjected to even more

restrictions when the new law was passed by applying the gun-free zones on top of the restrictions of the Appellant's license. His right to bear an arm for self-defense is being infringed by the practice of licensing (which is the practice of restricting the right), especially in regard to the gun-free zones of the new law and that are applied to what the Appellee calls the unrestricted license of the new law (which is vastly more restricted than the Appellant's as-issued license). Gun-free zones violate the Safe-Society Doctrine defined above. The gun-free zone assumes that the society will be safer if the constitutionally protected citizen does not bear an arm in a gun-free zone for defense of self or state because the risk of doing so far outweighs the societal benefit that the right itself protects. In other words, the legislature is directly contravening the right itself by preempting the constitutional guarantee without any evidence that such zones make society safer. The right is a limitation on the Appellee, on the courts, and on the legislature.

CLARIFICATION TO APPELLEE'S COUNTER-STATEMENTS

Without a concealed weapons license, the right to bear a gun for defense of self and state is prohibited. That is the effect of Michigan gun laws. The CCW license, in practice, constitutes the right itself. The license is much like a great work of art. It should contain no extra restrictions than are necessary. One can not bear a rifle or a pistol in the open for self-defense. It alarms citizens; it violates the privacy of the citizen while exercising their right. Only by the bearing of a concealed pistol may a citizen exercise their right to bear a gun for self-defense. The case is not moot, even if the Supreme Court allows the Appellant's license to expire by an arbitrary time restriction on the right. Any suit against the new law or license would have to address the very same issues before this court today. If the court required that Mr. Hickel get the new license and then file suit again, it would be a waste of the courts' time, as he would merely ask the

same questions again. All the time and energy spent on the current matter would have to be repeated anew and for what purpose? The matter would simply continue to escape judicial review as it has since 1927. Just look at what the Appellant had to go through and never get any lower court to look at any one of his constitutional questions, not a one. Why would he want to go through that again? He wouldn't, nor would it be proper to allow that to happen. The Court must review the questions asked so that any future suit may work from the post-review basis, otherwise the police power stands above a constitutional right and any restriction on the right would be proper, since the right didn't have a bearing now. Why would it later? Without the Supreme Court review, the right will continue to flounder. It can not be allowed to since it is a matter of State and National security. The lower courts failed a de novo review. They failed to apply strict scrutiny; they failed to review the Appellee's restrictions and the restrictions of the license and the license itself. Simply, the lower tribunal held that because Mr. Hickel received a license, his right was not completely prohibited, merely restricted. The invective is that any restriction, any license, would have been appropriate. But, since the court didn't look at the restrictions or the licenses, just that it could be restricted, they failed to do a substantive review. The Appellee claims on page 16 of their brief that the Appellant claims the board can not make rules or conduct rulemaking. The Appellee would have the court believe that this is any rules. The Appellant only means the one rule in which they created restricted licenses out of a law that provided for only one license. They also do not have the right to legislate the law that provided for only one license. Just as they recently told the Appellant when he requested an extension of his current license and was told that an extension was not provided for in the law, so too, they did not have the discretion to issue restricted licenses, as the law did not provide for that either, but they did. But, even

if the court held they did have the legislative authority to create multiple classes of licenses regulating the bearing of arms for self-defense, they could not apply such a restriction to a person whose reason was self-defense and met other requirements of the law. Any such restriction directly contravenes the right itself. Their argument of being able to base the issuance of a license based on need for a gun carried in self-defense is unconstitutional because it supplants a reason of self-defense given by the Appellant with a mere administrative privilege. Since the Appellant was issued a license, it had to be the license the law specified, which was the license intended by the legislature and not by the Appellee. The law simply did not provide for 25 varieties of restricted license – only one license, one without gun-free zones and not limited to hunting and target and business and banking purposes. The constitutional questions invoked by the Appellant shifts the burden of proof to the Appellee to prove that a genuine issue of material fact exists and that the right to bear arms is limited to just hunting, target, business, and banking purposes and subject to renewal every three years. Strict scrutiny applies in a de novo review of the questions brought before this court. The Appellee argues that they have "the discretion, based upon consideration of local needs, to determine what constitutes a "good" or "proper" reason,[17] Self-defense used as a reason by an otherwise qualified applicant would be a proper reason based on constitutional protection. Nonetheless, because the Appellant was issued a license, he did qualify for the license; the Appellee restricted it because they chose to restrict licenses – therefore the right -- as much as possible and only issued the license the legislature intended to be issued to just retired police officers and judges. They did so based on the vague standard of "good reason to fear...other proper reason." This they said was a

[17] Page 13 of the Appellee's Brief in Opposition to the Appellant's Application for Leave to Appeal to the Supreme Court.

vague standard and therefore chose to restrict licenses as much as possible. When they crossed that line, they violated the Appellant's rights, to wit: due process, equal protection, civil rights, and the right to bear arms under two constitutions. There was no compelling state interest in creating 25 varieties of restricted licenses. In addition to the above, this was arbitrary and capricious such that they tailored every restricted license to have the greatest restrictions possible. When the Appellant pressed them with multiple requests, compelling constitutional challenges, and finally the services of an attorney – a process that took 10 months – they gave in and issued a "for hunting & target and banking & business purposes" license, because he now *needed* that license. This license was the only one issued that year with that exact restriction. In other words, every other license was different than the one the Appellant received. This violated equal protection and showed arbitrary and capricious behavior. When the Appellant brought to the Appellee's attention that other Michigan counties were issuing licenses that were not marked restricted, they ignored this compelling equal protection anomoly, which showed they willingly continued their unequal treatment in the administration of a state licensing law. Either the law was unconstitutional or their execution of the law was unconstitutional. In either case, the above vague standard was the justification for their unconstitutional behavior or the law was simply vague (see above vague standard) and therefore unconstitutional. The constitutional questions invoked by the Appellant must be addressed, which all prior courts failed to do. In fact, the lower tribunals appear to be using the Summary Disposition rules to keep the invoked questions from being substantively reviewed. In short, they claim, that since Mr. Hickel didn't prove that carrying a concealed pistol is a right, he must loose on all counts. Oddly, the Appellant simply claimed a pistol was an arm protected by the constitution, Mr. Hickel was a citizen eligible for the right to bear arms, and self-

defense was a constitutionally protected reason. -- the full-time right; not the absolute right. He cited several court cases that backed his claims, including People v Brown, 253 Mich 537, 538, 541;235 NW 245 (1931), Schubert v Debard, 398 N.E.2d 1339 (Ind. App. 1980), and State v Kessler, ibid; yet, despite this simple full-time right argument he was eschewed in his claim on the basis that they said he claimed the right to bear arms was absolute. Never has the Appellant claimed the right was absolute, merely full-time. The absolute right is a right that applies to every one all the time. The full-time right is that right of reason that applies to the eligible person, to bear an eligible weapon, for an eligible reason without non-compelling restrictions or restrictions that violate the safer-society doctrine. The lower tribunals seem to have required of the Appellant in Summary Disposition that he prove his full-time claim above. In other words, the lower tribunals failed to review the restrictions and acts of the board because Mr. Hickel failed to prove he had rights, yet he was issued a license. Mr. Hickel merely asked the lower tribunals to review the acts for constitutional anomalies, which he pointed out and to which the Appellee admitted in all briefs to this court and all lower courts and in the Duffin v KCCWLB, Kent County, 17th Circuit Court (1995). In other words, the Appellee admitted to performing acts. Mr. Hickel claimed these acts were unconstitutional, either by law or by application of law, and the lower tribunals stated that since he didn't prove they were unconstitutional he must loose in Summary Disposition. There is no dispute with what the Appellee did, nor is their a dispute that the Appellant invoked constitutional questions of these acts, rather, the lower tribunals all failed to apply a de novo review, failed to invoke strict scrutiny in looking at the specific acts of the Appellee. Since they didn't look at the specific acts and restrictions, the Appellant lost on all counts. This is the same as saying that Mr. Hickel didn't prove he had a constitutional right, therefore, we can't look at what acts

he claims he had rights on. Isn't the court supposed to balance the police power with a constitutional right? Since they didn't review the restrictions, they didn't look at any constitutional questions. The Appellant has asked the Supreme Court to review the practices that the Appellee admitted to performing, at the restriction on the Appellant's license, at the three-year restriction of a license, at the concept of licensing a right and all the abuses this has resulted in, at the restrictions on the legislature, the courts, and the executors of these and determine if the Appellant's claims of constitutional repugnancy have merit. It is the nature of the license and its affect on the right, its restrictions that are before this court, including the license and a licenses' restriction as they affected the appellant at the time of the suit and during the suit. The lower tribunals failed to protect the Appellant's rights because while he made the above Constitutionally repugnant claims, the legislature further restricted his license, and then because it took so long to adjudicate the case Mr. Hickel is now in jeopardy of loosing what right he does have by either having his current license expire for a non-compelling state interest and arbitrarily chosen time limit of a license or because to continue to bear an arm, he must now get the new license that he claims is even more restricted in its scope then the license under which he brought suit and which is also restricted by an arbitrary and non-compelling state interest of three years. Why does the right have to be proven every three years? Why not every year? Why not every 10 years? Rather, why does the state even have to have a license expires? Why a license at all (The State of Vermont doesn't require a license for any US citizen to bear a concealed pistol)? Why not a training certificate? In other words, the Supreme Court must take the broader view brought to it by the Appellant and address every issue of Constitutional repugnancy mentioned in every brief since the case was filed in lowest tribunal. The claim of the Appellate Court that only the Article 1.6 and 2nd

Amendment claim are valid is false. This court must decide the merits of the case on every repugnancy of which there are many. The matter is simple, however. The court has a duty to the police power and to the rights of the Appellant. Where there is not a compelling state interest, the right must prevail. The compelling state interest can not violate the safer society doctrine. When the state chooses to make society safer by having citizens not bear arms, in part or whole, this violates the safer society doctrine. Did the legislature in the law or the Appellee in the application of the law have compelling interests that didn't violate the safer society doctrine? The answer is also simple. No. Mr. Hickel was eligible for the right – he got a license. It was restricted to hunting and target and business and banking – the right is not limited to just that. While this was being adjudicated the lower tribunals allowed the legislature to further restrict his purpose restrictions to time and place restrictions and then because it took so long to adjudicate the case, he is now about to loose the right entirely because of an arbitrary and non-compelling time restriction on a license that the state uses to keep felons and mentally ill persons from carrying an a pistol in a concealed manner. The law was not meant to keep a qualified citizen from carrying a pistol in a concealed manner for the reason of self-defense. "Mr. Hickel did not show sufficient evidence to justify an unrestricted license,"[18] the board said. What they are really saying is that the Appellant did not show sufficient evidence that he was a citizen worthy of the right to bear an arm for self-defense all the time but did so some of the time – similar to the idea that Rosa Parks had a right to sit in the front of the bus some of the time. In other words, the Appellee, a body of police officers, was deciding not only who had the right to bear an arm, but to what extent and then issued one of 25 or more restrictions. The Appellee is claiming that the Appellant had to prove his

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[18] Page 13, ibid.

need for a license and then issued a license based on the need. This would be like saying that Rosa Parks didn't have a need to sit in front of the bus, so we issued her a license to sit in the back of the bus. This would mean that a license supplants the right to bear an arm and that requirement of licenses now supercede the right itself, especially as adjudicated by the Appellee. Thus hidden within the requirements of licenses can be any requirement even ones that are not compelling. This practice is clearly unconstitutional because the license is clearly defining the right, the Appellee (who were just law enforcement officers) defined the license (and thus the right), and the legislature changed the right, all while the Appellant sued for the full-time (not absolute) right. The Appellant stated that this board was unconstitutional in its make up because it positioned the police power over the exercise of the right to bear arms. Why do you think the board created two quasi-pseudo classes of persons (law enforcement and all others) when they only gave retired law enforcement officers the unrestricted license? Substantive due process requires that a de novo review of this practice be done and put the whole of licensing a right in question as the right to bear arms as shown in People v Zerillo, 219 Mich., 635, 189 N.W. 927, at 928 (1922) can not be made subject to the will of the sheriff, which in this matter was done. Not only that, the Appellant has invoked the Constitutional Repugnancy of licensing itself, not just the restricted license – including the three year time limitation forcing one to re-license where the state has not proved a compelling interest in so doing. In addition, the court must now look at the restrictions on the Legislature, the Appellee, and the Courts in their use of police power to regulate a right that two constitutions specifically prohibit. It is this review that the lower tribunals have all refused to do because the standard of review used up until now has prevented such a de novo review. In other words, the very questions invoked by the Appellant as part of remedy have been squelched by the

very process because he, the Appellant, did not prove that he had a right to bear an arm for self defense and defense of the state. He should not have had to prove he had that right, merely that he invoked the question, which he did. It was up to the lower tribunals and the Appellee to prove their compelling interest in limiting the bearing of an arm for self-defense was limited to just hunting and target and banking and business purposes and to a three year time limit, which it clearly is not. As such, they were required to provide a post-deprivation remedy equal to the rights he would have had had he been issued the license required by law at the time the suit was brought -- even if it means striking licensing of the bearing of an arm for self-defense as unconstitutional. In any event, such a remedy is not the new highly restricted license of the new law. If the Supreme Court lets stand the lower courts decision they will have upheld the abuse of discretion standard to a higher standard than two constitutions. They will have additionally upheld the concept that any restricted license would have satisfied the right, which is clearly not proper. If they agree that the specific restrictions of hunting target banking, business don't violate the right, then they will have supported the notion that the right is limited to just those purposes. In short, the Supreme Court must find in the Appellant's favor and provide a post-deprivation remedy that protects for all the people the bearing of an arm for self-defense as guaranteed by two constitutions really means just that and one that doesn't expire after a specified period of time. Founders intent was society would be safer when the people bore an arm for defense of self and state. The Appellee, the lower tribunals all failed to uphold this right.

REMEDY

For the Appellant to obtain post-deprivation remedy, he must be allowed to carry a concealed weapon where he could have either prior to the 1927 act, MCL 28.426 or during the tenure of MCL 28.426, without the restriction

of purpose, gun-free zones, or a time expiration (no three-year expiration) Plus depriving non-violent misdemeants of the license (right) is unconstitutional. Or, the Court must rule that licensing of the right is unconstitutional and force the state to a Vermont-style concealed carry right, where no license is required and there are no restrictions that are not compelling nor that violate the safe-society doctrine.

Date: April 10, 2003 s/Stephen Hickel

Stephen M. Hickel

APPENDIX U

KENT COUNTY GUN BOARD POLICY MANUAL

GENERAL STANDARDS

1. Must by [sic] 18 years or older
2. Must be a citizen of the United States
3. Must have been a resident of Michigan for at least the past six (6) months.
4. Must not have been convicted of a felony. (If convicted of a felony you must use the Reinstatement of Rights Application)

In determining whether the applicant is a "suitable person", the concealed Weapons Licensing Board will consider, among other items, the applican'ts:

1 Amount of Training in firearms.
2 Prior criminal activity.
3 Length of residency in the county.
4 Physical capability of safely handling a hand gun.

THE LAW IN GENERAL

Any person who carries a pistol, either 1) concealed on or about his/her person, or 2) in a motor vehicle, is in violation of State law, which could subject the violator to a sentence, if convicted, of up to five (5) years imprisonment or a fine up to $2500.00 A "pistol" is any firearm, loaded or not, which is under thirty (30) inches in length.

Possession of a valid "concealed weapons permit" exempts a person from these criminal penalties, as long as any permit restrictions are not violated.

A person who desires a concealed weapons permit must apply, by the proper form, to the Concealed Weapons Licensing Board of that County, in which the person resides. The license issue by that County's Board will be effective for the entire State of Michigan for a period of not more than three (3) years.

No person is in violation of the law, if he/she carries a pistol concealed in his/her home, on one's own property, or at his/her place of business (if such person owns that business). The brief statement of the law is not all inclusive. Should you have any questions regarding this law, please contact an attorney.

KENT COUNTY CONCEALED WEAPONS LICENSING BOARD POLICY ON ISSUANCE OF LICENSES

1. BASIS OF POLICY

The Kent County Concealed Weapons Licensing Board, which consists of the Prosecuting Attorney, Sheriff and Director of the Michigan State Police (or authorized deputies) hereby sets forth the policy it will follow for the issuance of concealed weapons licenses. Two (2) categories of licenses are available, and either may be granted to citizens of Kent County: 1) General and 2) Restrictive.

Licensing may be available depending upon the facts and circumstances presented to the Kent County Concealed Weapons Licensing Board in support of an applications. The board will evaluate all applications uniformly and exercise its discretion as it deems proper to assure the safety, interest and well-being of the citizens of Kent County and the State of Michigan.

POLICY

2. STANDARDS FOR GENERAL CONCEALED WEAPONS LICENSES

A. **THE LAW.** A general concealed weapons permit allows the holder to carry a pistol concealed on or about his/her person, in his/her automobile, in his/her home, or otherwise as he/she/ deems necessary. There are not restrictions on such a license.

B. **THE STANDARDS.** The Kent County Concealed Weapons Licensing Board limits the issuance of GENERAL permits to those persons connect with the criminal justice system, where there is a legitimate threat of bodily injury because of past, present or future dealings with criminal defendants.

C. **ACTIVE PEACE OFFICERS.** The Board will not issue permits to such persons since there is a statutory exemption in existence.

D. **FORMER PEACE OFFICERS: RETIRED.** This Board will consider and generally approve applications for concealed weapon permits submitted by former peace officers who have regularly retired from active duty pursuant to the regulations set forth by their respective departments.

E. **FORMER PEACE OFFICERS: VOLUNTARY TERMINATION**. This board will consider, but not generally approve applications for concealed weapons permits submitted by former peace officers who have voluntarily quit their employment. In addition to other criteria found in (2) above, which generally excludes former peace officers

from unrestricted permits, this Board will inquires as to the reasons for the former officer's voluntary termination of his/her employment, and his/her service record while with the department in question.

F. **FORMER PEACE OFFICERS: DISCHARGED.** This Board will consider, but not generally approve, applications for concealed weapons permits submitted by former peace officers who have been discharged from their duties by their departments.

3. STANDARDS FOR RESTRICTED CONCEALED WEAPONS PERMITS

There are four categories of restricted concealed weapons permits which are recognized by the Kent County Concealed Weapons Licensing Board: Hunting and/or Target, Bank/Business/Home, Employment Related, Reserve Peace Officer.

Any violation of the restrictions of any of these permits will make the permit subject to revocation by the Board and may result in a felony charge being brought against the violator.

[remainder omitted to save space]

Stephen Hickel, Petitioner in Pro Per
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Dated: July 12, 2003